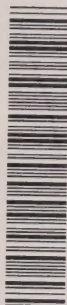


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Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 407

DATE: Thursday, November 5, 1992

BEFORE:

A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

FARR
ASSOCIATES &
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4



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VOLUME: 407

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A. KOVEN Chairman

E. MARTEL Member

FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416) 963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the Civic Square,
Council Chambers, 200 Brady Street,
Sudbury, Ontario on Thursday, November
5, 1992, commencing at 9:00 a.m.

VOLUME 407

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.	)	MINISTRY OF NATURAL
MS. C. BLASTORAH	)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	
MS. J. SEABORN	)	MINISTRY OF ENVIRONMENT
MS. N. GILLESPIE)	
MR. R. TUER, Q.C.	)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN	)	ASSOCIATION and ONTARIO
MS. E. CRONK	)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY	)	ASSOCIATION
MR. D. HUNT)	
MR. R. BERAM		ENVIRONMENTAL ASSESSMENT BOARD
MR. J.E. HANNA	)	ONTARIO FEDERATION
DR. T. QUINNEY	)	OF ANGLERS & HUNTERS
MR. D. O'LEARY		
MR. D. HUNTER	)	NISHNAWBE-ASKI NATION
MR. M. BAEDER	)	and WINDIGO TRIBAL COUNCIL
MS. M. SWENARCHUK	)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. D. COLBORNE	)	GRAND COUNCIL TREATY #3
MR. G. KAKEWAY)	
MR. J. IRWIN		ONTARIO METIS & ABORIGINAL ASSOCIATION
MS. M. HALL		KIMBERLY-CLARK OF CANADA LIMITED and SPRUCE FALLS POWER & PAPER COMPANY



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MR. B. BABCOCK)	MUNICIPAL COMMITTEE
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MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
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APPEARANCES (Cont'd):

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MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>ARGUMENT:</u>	<u>Page No.</u>
Axford	69440-69557
Lloyd	69558-69605

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning, Mr. Axford.

3 MR. AXFORD: Good morning.

4 MADAM CHAIR: Welcome to the timber
5 management hearing again and we're happy to be hearing
6 from you today and hearing the final argument from the
7 Canadian Association of Single Industry Towns.

8 We have your submission in front of us
9 and, please begin when you're ready.

10 MR. AXFORD: Thank you. I'm sure that
11 you, as well as many others, are happy to see me
12 perhaps for the last time.

13 ARGUMENT BY MR. AXFORD:

14 I heard from my counsel that we were
15 allowed to do a number of things in the final argument
16 and there were a number of aids that we could bring,
17 but my budget restricted me, Mr. Freidin, I'm sorry, I
18 couldn't bring the chorus line today.

19 Anyway what you have in front of you, the
20 front page of the presentation is kind of an agenda of
21 the direction I thought I would try and go.

22 There is a question of dealing with the
23 issues that the Board has raised in its questions, and
24 I intend to deal with it before we go on to a number of
25 our submissions. But I don't know what your procedure

1 is on that, so I would just leave it to you how you
2 would want to do that, or I can deal with it after
3 ours.

4 MADAM CHAIR: Well, we're here to listen,
5 to you, Mr. Axford, and so do whatever you think is
6 best. We have scheduled you for this morning and
7 you're free to make your presentation as you want.

8 MR. AXFORD: Okay, thanks very much. In
9 that case, I think we're going to start with our terms
10 and conditions. And, as you're aware, we're one of the
11 groups that did not follow the format of MNR and MOE
12 and a number of others that had all of their terms and
13 conditions laid out in the same direction.

14 Ours were a little more simple, there are
15 only two pages, and we did not change them over time
16 and even today as I look at them they are relatively
17 the same. I think these were written almost three and
18 a half years ago and they have remained relatively the
19 same, but you'll see some shift in the focus
20 considering how the testimony has gone as we go through
21 the final argument. So what I want to do is walk
22 through the 23 of them and just show you where we have
23 seen some accommodation in some areas and where we
24 haven't.

25 First of all, under the planning team --

1 and if you don't have a copy of these, there's a copy
2 in the book that I gave you. First of all, in the
3 planning team, we're appreciative of the fact that
4 there's a possibility for a stakeholder member on the
5 planning team. We recognize that that's the way we
6 wanted to go and we're very happy with it.

7 The second item, the planning team has to
8 have some of its people elected. That really hasn't
9 been dealt with at length by too many people. We're
10 going to come back to that one, we have something on
11 that, and we still believe that some people have to be
12 elected because they have to be accountable.

13 The identification of planning team
14 members, that's been dealt with reasonably well.

15 The retention of the nucleus, that's
16 simply an issue of how you keep the conscience, the
17 corporate conscience of that planning team or
18 stakeholders committee together, and I don't think
19 there's going to be too much problem there.

20 No. 5, the crux of our issue had to do
21 with socio-economics, we're going to talk about No. 5.
22 We certainly believe there has to be some pilot
23 economic analysis somewhere.

24 No. 6, this is again socio-economics and
25 the question in No. 6 that we posed is: Does the

1 public get a chance to make that determination during
2 the open house. We didn't think so and we're going to
3 talk a little bit about that.

4 No. 7 was somewhat controversial because
5 of the fact that people felt that MNR had some limits
6 to their range of what they could do and we'd like to
7 deal with that as an information issue rather than MNR
8 determining what government policy should be.

9 No. 8, this is education and training.
10 We're going to deal with that under our argument.

11 No. 9, we're going to deal with that
12 under the questions that the Board posed.

13 No. 10. We're still in that position, we
14 wanted some form of socio-economic guidelines and we
15 are going to illustrate why.

16 No. 11, the documented efforts, I think
17 we're in reasonably good order on that one I think MOE
18 has pushed the point of having things traceable, so
19 we're probably okay there, but we wanted to make sure
20 that the socio-economic considerations are also
21 traceable.

22 The areas of concern we're still not
23 satisfied with in 12.

24 In 13 we've got two points in our final
25 argument to deal with 13 about linking up things and

1 using opportunities.

2 No. 14, we haven't been satisfied with
3 the discussion on 14 and 15 and we're going to give you
4 a couple more things today on that.

5 16, 17 and 18, we're generally going to
6 pass because we wanted to concentrate on
7 socio-economics and we felt that some other areas might
8 be better served.

9 No. 19, generally we believe it's done in
10 MNR's conditions providing it remains the role of that
11 technical committee to deal with it.

12 No. 20, this one again is partly like the
13 information piece, that MNR has to take some role to
14 show what's going on so that it will help people make
15 decisions. We'll deal with that in our argument.

16 21, I think that really is almost the
17 same as 20.

18 And 22, we're going to deal with at more
19 length.

20 And 23 we're going to deal with at length
21 in the argument.

22 So a number of things have been
23 accommodated but we're very concerned about some
24 others.

25 Now, what we've done at the end of this

1 little booklet we gave you, there are the last four
2 pages I think it is, the first two of the last four are
3 all of the series of submissions that we're making, and
4 the last two of the last four are all of the
5 conclusions so that you'll know where we're going.

6 And generally what we've done is we've
7 made a submission, I then have some evidence listed and
8 I'm going to read you some of the pieces from the
9 evidence, usually they're referenced right in here and
10 if you require one or more of these they're sitting
11 right here and I've ticked them off in yellow.

12 So with that in mind I think I'm going to
13 go right ahead on submission No. 1.

14 We have always said that socio-economics
15 were the most important thing we wanted to deal with.
16 We've always said that we didn't feel it was done. So
17 we wanted to make the case that the Board had to make
18 some form of a ruling on socio-economics that would
19 cause MNR to look a little harder at it.

20 So when we walk through the evidence
21 you'll be seeing some of that, but it's also important
22 to indicate to you that we're not the biggest party in
23 here and you don't see us very often and when you do
24 see us it's on a very narrow range of issues. So a
25 couple of submissions dealt with that and submission 1

1 is exactly that.

2 Submission 1 is that, the Board may be
3 inclined to underweigh extraction community issues when
4 in fact both the socio-economic issues and the
5 communities themselves are highly fragile and sensitive
6 to potential Board rulings.

7 So that we're asking you to conclude that
8 by virtue of this fragility and by virtue of the fact
9 that we don't show up very often you should be very
10 careful as you listen to these things cause you
11 wouldn't get them from many other areas.

12 The evidence for that consists of the
13 number of appearances and the number of days of
14 activity before the Board, you haven't seen us very
15 much quite simply. So the kinds of things that we're
16 saying are going to have a very narrow time frame over
17 the long term of your life.

18 Secondly, we took a couple of witness
19 statements, the first one being from Doug Scott,
20 indicating that it was very difficult to assemble a
21 group of communities and of people that are thinking
22 about it in extraction areas and Doug's statement had
23 to do with the northwest coalition and the meeting at
24 the Quetico Centre, and he said that when they wanted
25 to deal with it:

1 "...it represented a large number of
2 individual chambers and we face the task
3 of how we understand what the document
4 says and how do we understand and
5 identify what concerns that we have and
6 we decided the best way would be to
7 assemble a workshop of a wide range of
8 people that are residents of the area."

9 And essentially that it's very, very
10 difficult to get all these people together cause
11 they're so wide apart geographically.

12 The second point comes from Dan King from
13 Venture Tourism and his point was that there is a
14 problem getting people together when they come from
15 wide geographical areas, and he said it's generally a
16 low margin industry which employs quite a lot of
17 people, it's more labour intensive a business and what
18 they experienced - on 67939:

19 "So what we experience here is a lack
20 of participation from people who are
21 forest users from outside the region."

22 And his point is not a great deal
23 different than ours. It's difficult to get people
24 together, it's difficult to show some kind of a
25 coalition. So when you do hear from us we're going to

1 try and be very clear in what we want.

2 The next thing is that -- our point 3 is
3 that the assumption of wood harvest as steady and
4 dependable. Whether it's a wood harvest or a mine,
5 things are not steady and dependable in these
6 communities and testimony from a couple of people,
7 including Fahlgren. He was on talking on 54941 about
8 the Griffith Mine, essentially that the mine closed
9 down in 20 years and the site was cleaned up and impact
10 on the adjoining park of Pakwash Park on the Trout
11 River where two tourist industries still operate and
12 operated during their operation have been completely
13 successful.

14 And the point here is that various
15 industries come and go and it makes these kinds of
16 communities fragile but if you're careful as you go
17 along, whether it's mining or forestry, you're okay.

18 From Lorne Roulston in his testimony in
19 Red Lake, this is a timber operator, 54520:

20 "The forest industry is a year-round
21 operation, it's an economic spinoff to
22 the whole country."

23 And coming from that testimony, and Lorne
24 Roulston was one of the owners of Skookum Bay Lumber,
25 maybe I can't say that, he was a timber operator.

1 Anyway we dealt with the issue of
2 Vermilion Bay -- pardon me, Little Vermilion and the
3 difficulty with the no-cut zone and we're going to
4 26344 where Pat Sayeau was talking to the Chairman at
5 the time about a no-cut zone at Little Vermilion, and
6 the point here simply is that there was some argument
7 over how much should or shouldn't be cut in that
8 location.

9 And what happened is that there was
10 discussion and the discussion went from one mile down
11 to 240 kilometres and it went a little further down to
12 what they were going to do between 120 and 240, and
13 eventually there were some problems, and the problems
14 were essentially that there was a breach of that
15 particular area.

16 And the only point of bringing this up is
17 that under 26362, which is a testimony again, it's a
18 discussion between Mr. Multimaki and Mr. Sayeau and Mr.
19 Multimaki's statement is:

20 "Well, this has to do with the people
21 that breached this particular area. The
22 firm was Skookum Bay, they own the local
23 sawmill in Red Lake which is I guess the
24 only real industry in downtown Red Lake."

25 And our counsel Mr. Tobin to Mr. Sayeau a

1 little later on in time on 54881:

2 "It is common ground that the operator
3 in that situation was a company called
4 Skookum."

5 And the answer was:

6 "Well, at the present time the company
7 is not operating."

8 So simply to show that the companies come
9 and go, that the resource, whether it's a mine or
10 timber, is going to stay there and has to be dealt with
11 over time and it can't be dealt with on a daily basis,
12 on a permanent basis, you have to think about it over a
13 long period of time.

14 The last point under the evidence that
15 single industry communities are very vulnerable and
16 fragile is simply the comment and, in this case it was
17 from Pat Sayeau at the Red Lake hearing having to do
18 with CASIT organization, that:

19 "The organization's basically open
20 open but it's of particular appeal to
21 single industry communities who are
22 trying to find mechanisms and ways to
23 diversify --", should be diversify,
24 "...their economic base, so that with the
25 loss of a single industry they are not

1 totally devastated as has happened in Red
2 Lake."

3 And Red Lake is considered a town that's
4 in not too bad shape compared to others, but people are
5 willing to admit that the demise of various industries
6 has hurt us.

7 So all of the point of submission 1 is
8 that you're not going to hear from these people a lot
9 but they're out there and they're getting hurt as bad
10 or worse than anybody else.

11 So the conclusion is, by virtue of the
12 fragility of resource-based communities and by virtue
13 of the lack of attention shown to date for the Ministry
14 of Natural Resources, the Board must give special
15 weight to the evidence submitted in respect of the
16 community component of timber management.

17 No. 2 submission is probably one of the
18 most critical that we make in all of the group of
19 submissions, I think there's about 15 of them here. If
20 you take anything from our final argument take No. 2.

21 Our point is that socio-economics is
22 critically important but on the local level it's
23 virtually unaddressed by MNR. And for this the first
24 piece of evidence was Judy Skidmore in the hearing in
25 Red Lake and she had a copy of the MNR's marketing

1 statement in the Ontario Government telephone book and
2 in her statement it said:

3 "The marketing statement read...",
4 This is MNR's marketing statement, and the question
5 was -- sorry, I have to back up here.

6 "MR. TOBIN: Q. Dealing with the page
7 of the Ministry of Natural Resources in
8 the upper righthand corner what did you
9 discover about the Ministry's mandate as
10 it relates to social and economic
11 matters?

12 "MS. SKIDMORE: A. Well, it's quite
13 clear that the mandate, and it says "the
14 continuous economic and social benefit of
15 the people of Ontario", and it was so
16 clear that there was some responsibility
17 for the Ministry to consider social and
18 economic benefits."

19 So the point is, somebody's advertising
20 it, they say they are doing it.

21 Our second point in the evidence was from
22 Ed Everly, former district manager in Red Lake and it
23 comes from page 54616. When I'm giving the page
24 numbers, these page numbers are in reference to the
25 transcripts. Mr. Tobin's question to Mr. Everly:

1 "Q. Sir, is there any process that
2 makes the district manager consider
3 social or economic concerns?"

4 Ed Everly's answer:

5 "A. Not that says you have to, but --

6 "Q. And from your experiences,
7 obviously you believe they're important?

8 "A. I believe they're very important."

9 This is a man that spent many, many years
10 being the district manager in Red Lake.

11 The next piece of evidence has to do with
12 an exchange between myself and the Chairman of the day
13 and it's found on 26401, and this had to do with some
14 discussion about whether or not social economics were
15 the right kind of thing to bring before the Board.

16 "MR. AXFORD: I throw it back to the
17 Chairman. Are we or are we not dealing
18 with socio-economics in this hearing?

19 "THE CHAIRMAN: Well, we certainly are
20 in terms of the requirement of the
21 Environmental Assessment Act."

22 And following that, just a little bit
23 down the page from Mr. Kennedy:

24 "Those social and economic effects
25 have been dealt with at the provincial

1 level which is how we are handling the
2 evidence here at the hearing."

3 With Mr. Kennedy's statement I submit to
4 you that there was no indication of efforts locally.

5 The next piece of evidence was a letter
6 from the Ministry of Natural Resources to Judy Skidmore
7 at Northcare, this was the piece of evidence that we
8 had her bring at the Red Lake hearing, and essentially
9 the letter says:

10 "Timber management plans are not
11 intended to serve as socio-economic
12 assessment of all forestry activities."

13 It goes on to say:

14 "You can provide your own assessment
15 of the social and economic consequences
16 of the proposed timber management."

17 I think I'm going to read the whole thing
18 so I don't have anybody misreading this.

19 "Timber management plans are not
20 intended to serve as socio-economic
21 assessment of all forestry activities on
22 this management unit. However, you are
23 encouraged to participate in the timber
24 management planning process and provide
25 your own assessment of the social or

1 economic consequences of the proposed
2 timber operations."

3 And I think it's pretty clear what the
4 Ministry's position is from that letter alone. But if
5 that weren't enough --

6 MR. BERAM: Excuse me, Mr. Axford.

7 MR. AXFORD: Yeah.

8 MR. BERAM: For the sake of the record,
9 could you provide some identifier to that letter or the
10 piece of evidence that you have that you're referring
11 to that you don't have a specific exhibit number for.
12 The date of the letter, or...

13 MR. AXFORD: Okay. That letter is
14 something that came into evidence when Judy Skidmore
15 was speaking at the Red Lake hearing.

16 MR. BERAM: I appreciate that. Just for
17 the sake of the record, so we can find it a little more
18 readily on the record--

19 MR. AXFORD: Okay.

20 MR. BERAM: --if you cite the author of
21 the letter, the date that it was sent or the date it
22 was prepared.

23 MR. AXFORD: Okay. This is a letter from
24 the Ministry of Natural Resources to Northcare, it's
25 dated the 2/13/91.

1 MR. BERAM: Thank you.

2 MR. AXFORD: The next piece of evidence
3 was the letter, the exchange of correspondence that
4 went back and forth between myself and Ed Everly as
5 district manager. This was given as a piece of
6 evidence during Everly's testimony in Red Lake and I'm
7 going to read from his response on it. If anybody
8 wants any of these, just holler out, I have them all
9 here.

10 The response:

11 "Thank you for commenting on the
12 preliminary maps developed for the Trout
13 Lake Forest 20-year management plans.
14 Your concerns for commitments for local
15 employment, capital investment and
16 taxation are valid but do not deal
17 directly with the preparation of a
18 20-year management plan. It's agreed
19 there will have to be serious
20 negotiations between the company,
21 Ministry and community to solve these
22 concerns, however the FMA process is not
23 the avenue to be used."

24 At that time Mr. Everly agreed that there
25 had to be serious negotiations, but he didn't recognize

1 the FMA process and he didn't suggest any other
2 process.

3 Turn then to Doug Scott again, 53886, his
4 comments about timber management planning generally and
5 he was dealing with the issue of whether or not timber
6 management planning takes into account socio-economics.
7 The statement:

8 "However, this document doesn't deal
9 with it, it deals only with the natural
10 environment. It covers the natural
11 environment quite thoroughly, we have no
12 quarrel with that, we're supportive of
13 it, but it doesn't deal at all with the
14 social and economic environments and for
15 that reason we believe it's flawed."

16 From Judy Skidmore, 54654:

17 "We found that the information that
18 was put together didn't reflect the
19 community's concerns or the community's
20 employment or the community's long-term
21 benefit."

22 From Hartley Multimaki, a couple of
23 references, 26373, 26374, in the fact that there was no
24 specific socio-economic responsibility. This is I
25 believe Pat Sayeau questioning Hartley Multimaki, and

1 Sayeau says:

2 "Now, can you draw to my attention
3 where it indicates -- if you're
4 responsible for Class Environmental
5 Assessment documentation, can you
6 indicate where your areas of
7 responsibility lay on you a
8 responsibility for assessing the
9 socio-economic benefits or effects of the
10 plan to a local community or a community
11 inside the planning area, or is there a
12 member of your team that's responsible
13 for that, a single individual.

14 "A. That specific responsibility as
15 you've outlined it I guess was not
16 directed at any single individual on the
17 planning team. I think, as we pointed
18 out, that as a whole, the planning team
19 as a whole and all of the individuals
20 certainly I guess -- yeah, I guess the
21 term I'm looking at is it's inherent in
22 most of the operations where most of the
23 operations that we plan and the method
24 with which we plan them and so on."

25 And I'll skip a paragraph, and Multimaki

1 continues:

2 "So it was recognized that certainly
3 there were social and economic benefits
4 to be had as a result of timber
5 management activities and it was, I
6 guess, an inherent responsibility for all
7 the planning team members and it was
8 recognized as such."

9 So the point of the question was: Is
10 there anything written down where you're supposed to do
11 this, and the answer was: Well, it's sort of inherent
12 in who we are and what we do, but there didn't appear
13 to be anything written down.

14 The next one has to do again with the
15 former district manager speaking about this issue and
16 Barry Tobin's question was:

17 "Based on the number of years you've
18 been involved, can you make any
19 suggestions as to what, if any, formal
20 process should be in place to have social
21 and economic concerns addressed in the
22 planning stage and in the plan?

23 "A. I think there should be some
24 mechanism in place where the district
25 manager could weigh the different

1 impacts and actually put some numbers on
2 it, not necessarily dollar numbers, but
3 maybe the number of people employed or, I
4 guess, the social benefits of being able
5 to go out and create an area that hasn't
6 been cut.

7 "But there should be a way that the
8 district manager can compare. He should
9 have some -- if there was a target, that
10 he had to produce so many tourist camps
11 for example, that he could relate that to
12 producing so many cunits of wood and
13 evaluate the different impacts of it.

14 "I think the district managers in the
15 Ministry and his staff would like to be
16 able to make those decisions and
17 comparisons and would like to have
18 information or a process that they could
19 follow or something they could follow
20 that they could assess the impacts of the
21 decision. But in the absence of them
22 they go by how they feel, how they think
23 and, of course, they're influenced by the
24 people that tell them."

25 It's pretty clear the district manager

1 found a problem.

2 Again, from Ed Everly 54602, the question
3 from Barry Tobin:

4 "When you were managing those programs
5 what, if any, consideration on a formal
6 basis was given to you by the
7 socio-economic effects of those
8 programs?

9 "A. There was nothing dictated or set
10 down that we had to consider the
11 socio-economic impacts of anything we did
12 but all of the things we did within
13 the Ministry I think we were conscious of
14 the impact it would have on the
15 community, on the people and tried to be
16 sensitive to those views."

17 "Q. That was a personal thing, I take
18 it, rather than I suppose a Ministry
19 directive?

20 "A. Yeah, it was."

21 Awfully damning to the process. It says
22 a lot of good things about the people but it says a lot
23 of very bad things about the process.

24 Again Ed Everly, 54633, the question from
25 Tobin:

1 "You have no tool to measure those two
2 sets of variables, the value of the
3 fisheries as opposed to the value of the
4 wood there and the final disposition
5 rests somewhere based on those set of
6 values?

7 "THE WITNESS: Not that I'm aware.
8 There's really no way of measuring it."

9 And then to sum up the evidence on the
10 socio-economics there was a nice exchange here that was
11 useful from the Chairman, this would be Jeffery, and
12 Mr. Kennedy. And unfortunately the number is missing
13 off this, it's 264 something or other and I can't tell
14 you the last two numbers.

15 "THE CHAIRMAN: Who would be doing an
16 economic analysis of, for instance, the
17 net benefit or disbenefit to a local
18 community in terms of the timber
19 management process if at all, or is it
20 done only at a provincial, regional or
21 district level?

22 "MR. KENNEDY: That kind of analysis is
23 not undertaken. We do not and have not
24 and have not contemplated, to the best of
25 my knowledge, such analysis."

1 How much more do we have to tell you?
2 There's something wrong in socio-economic analysis.
3 The former district manager is saying so, the MNR's
4 witness is saying so, there's a problem.

5 So our conclusion, after looking at this,
6 the Board must not allow any approval of an exemption
7 from an environmental assessment when the proponent
8 clearly refuses to deal with socio-economics as it
9 pertains to local communities.

10 Furthermore the Board must order this
11 obvious fall to be corrected immediately by adopting
12 the CASIT recommendation, the first of which is that
13 the Board must order socio-economic guidelines, not
14 unlike moose, tourism or stream crossing guidelines.

15 And, as I said, if you're looking for
16 anything in our submissions please look at No. 2.

17 No. 3 has to do with the report of the
18 mediator or facilitator to the Environmental Assessment
19 Board. And I don't want to get into the subject of
20 negotiations cause that isn't the right sort of thing
21 to put on the table here, but I want to talk a little
22 bit about the product of those negotiations to show how
23 difficult socio-economic issues are and to to show how
24 difficult some of the issues that we're talking about
25 in our submissions are. You're not going to find a lot

1 of them in this book.

2 Our submission is that the negotiations
3 of the full-time parties did not fully deal with the
4 issues of authority, education, opportunity, areas of
5 concerns, target settings, land use plans,
6 socio-economic analysis.

7 And our evidence for that is simply the
8 document itself. And what I've done, I put a couple of
9 little marks in the document and you're welcome to look
10 at this, but they're pretty simple things here.

11 Look at section 1 - just a minute, I'll
12 get these sections - it goes A, B and C and then the
13 rest are blank, and after the first blank there is a
14 Section 1 and it says:

15 "Planning Teams: Consensus has not
16 been reached on this topic."

17 And there's a lot of good stuff that
18 consensus was reached on but our submission is it's not
19 critical stuff. Then No. 3,

20 "Procedural Matters for the
21 Stakeholders Committee: Consensus hasn't
22 been reached on this topic."

23 And I would submit to you that procedural
24 matters had a lot to do with what the stakeholders
25 committee was going to do with their time and whether

1 or not they had any authority. So consensus hasn't
2 been reached.

3 Next one, the issue of bump-ups,
4 consensus hasn't reached on this topic.

5 Timber Management Objectives, Strategies,
6 Problems and Issues: Consensus has not been reached on
7 this topic.

8 Non-timber Values: Consensus has not
9 been reached on this topic.

10 Area of Concern: Consensus has not been
11 reached on this topic.

12 Involvement of Local Stakeholders
13 Committee in Issues Resolution: Consensus has not been
14 reached on this topic.

15 Involvement of Regional Directors in
16 Issue Resolution: Consensus has not been reached on
17 this topic.

18 And, lastly: Analytical Methods for
19 Assessing Social and Economic Advantages and
20 Disadvantages: Consensus has not been reached on this
21 topic.

22 Above and beyond what we didn't reach
23 consensus on, where we've got a heading, there are no
24 headings whatsoever for character or history or
25 opportunity, some things that we wouldn't mind dealing

1 with.

2 So our conclusion is that the Board will
3 have more than average difficulty dealing with these
4 issues as suggestions are often not written or analyzed
5 and, therefore, CASIT's position on these kinds of
6 issues and these headings is at least equal or more
7 valid than any other full-time party.

8 And we had asked during the course of the
9 Board's hearing if they would consider making some kind
10 of ruling that socio-economics is a legitimate topic,
11 that we were hoping to focus the discussion and
12 negotiation on those areas so it would take us where we
13 wanted to go, but the Board couldn't make a ruling but
14 it did ask some questions.

15 And I can tell you, we really appreciate
16 the questions and we're going to come to deal with some
17 of those because that had almost the same effect of
18 making a ruling that there were some issues out there
19 that needed some discussion.

20 And I'm almost embarrassed that we get to
21 this length in the hearing before we get to that
22 discussion of those kinds of issues.

23 Submission No. 4, that the timber
24 extraction process as constituted today results in an
25 inequitable flow of benefits which is borne out by the

1 evidence and, furthermore, data on this issue is
2 difficult to locate.

3 And this submission is essentially to
4 deal with the fact that extraction communities are
5 different than mill communities. And there are some
6 limits of the Board's ability to deal with this, but
7 we'd like to propose some possible fixes here.

8 The evidence is pretty straightforward
9 and I don't think anybody is going to argue with it.
10 Pat Sayeau in his written submission:

11 "With my hat as counsellor in
12 this town I'm absolutely distressed
13 that our community hosts one of the
14 largest timber harvests in the province
15 and yet receives very little benefit from
16 this work.

17 "I've presented for you under separate
18 cover a list of average taxload per
19 household from our town and from Kenora
20 and Dryden which are two towns with pulp
21 mills in them. These people in Kenora
22 and Dryden are given the benefit of our
23 harvest and we're paying the price and
24 this is a miscarriage of simple justice."
25 And he went on to give some of the

1 differences in the communities.

2 Dave McLeod, the Director of the Board of
3 Education made a written submission along the same
4 lines, and one of his statements on page 3 are:

5 "However, we strongly believe there is
6 a basic inequity in place between harvest
7 in mill towns in respect to the
8 availability of commercial assessment
9 which directly affects the quality of
10 programming...", this is educational
11 programming,

12 "...we can offer and the level of taxes
13 that our ratepayer must contribute."

14 If I can just remind you for a minute,
15 Dave McLeod's testimony was on the effects of that lack
16 of assessment base to the educational system and some
17 suggestions he made about how to deal with it.

18 And the third one is Hugh Carlson who is
19 both a tourist operator and the Reeve of the community
20 and it's from 54786. And the witness statement says:

21 "But looking at it in very simple
22 terms, I mean they...', and he was
23 referring to Dryden and Kenora type places,

24 "...have nice paved roads and curbs and
25 gutters and everything, they have large

1 libraries, and I mean, they're larger
2 communities than we are, but they have
3 swimming pools and they have all the
4 recreational facilities that we in this
5 municipality have a very difficult time
6 to afford and yet our taxes in Red Lake,
7 as I say, they are the highest from all
8 the way across the northwest. Thunder
9 Bay is only second."

10 I mean, everybody thinks that Thunder Bay
11 has got the highest taxes, they're second to Red Lake.

12 So the required solutions for that and
13 our conclusion is that the Board must at bare minimum
14 order a clearer identification of such things as
15 stumpage dollar flows in order to stimulate a healthy
16 public discussion of allocation. And if you look at
17 our book it says:

18 "...which is beyond the Board's mandate."

19 I'd like you to stroke that out, that
20 part. I'm not convinced yet it's beyond the Board's
21 mandate. I'm not going to give you that one.

22 An alternate fix for this kind of thing,
23 and we have suggested a very simple one, is to get MNR
24 to identify some of these so we can have some
25 discussion about it and try to politically influence

1 it.

2 But an alternate fix, if the Board wanted
3 to be a little more aggressive, when we have a Crown
4 management area instead of having it managed by -- you
5 can manage it by the MNR but you could licence it to
6 the community.

7 If you wanted to be more aggressive in a
8 ruling, that Crown timber around a Red Lake and many
9 other communities of Crown timber area, if you're
10 looking for a more aggressive solution that area could
11 be licensed to the community itself. That would change
12 the approach to those kinds of things.

13 There are a number of other fixes that I
14 think are possible having to do with the stakeholders
15 committees. Dave McLeod makes some recommendations in
16 his submission, three recommendations that came out of
17 his that are possibly useful if the Board is
18 considering this area.

19 "The Board may order that the Ministry
20 of Natural Resources do everything in its
21 power to encourage expanded commercial
22 activity in the harvest areas in order
23 that there be more stability and an
24 improved assessment base."

25 I mean, it's not unusual for the

1 government to determine that they want to move activity
2 to the north or to somewhere. The government can be
3 proactive in these kinds of things.

4 And what Dave is saying in here is that
5 the Ministry could be proactive in encouraging
6 activity, and I think that one of the Board's questions
7 dealt with that issue.

8 No. 2:

9 "The Board may also recognize that
10 its power to order the return of stumpage
11 to a region may be limited."

12 I think limited -- the treasurer wouldn't
13 be too happy about it.

14 "Nevertheless, the Board still has the
15 power, if not to order, then at least to
16 recommend that Cabinet review the
17 allocation of stumpage to general revenue
18 as opposed to dedicating that revenue to
19 the areas in which it's created."

20 So the Board could recommend to Cabinet
21 that they review this policy. The Board can't -- I
22 mean, the Board can tell them to change it, but it's
23 not likely to be listened to but it could be recommend
24 that it be reviewed.

25 The third thing:

1 "The Board also has the ability to
2 structure MNR's proposed stakeholders
3 committee so that substantial authority
4 on the issues of development of economics
5 is retained within the committee."

6 And you're going to find in one of our
7 later submissions that we rather liked the third one as
8 well as the others and that there could be things where
9 the stakeholders committee reigned supreme on certain
10 issues, maybe on other issues they're not as supreme.

11 So what McLeod is suggesting here that
12 they have substantial authority on the issues of
13 development of economics, and that's something that
14 hasn't really been up for discussion. It was in our
15 evidence, but there's never really been any debate or
16 discussion about it.

17 So our conclusion then, there are a
18 number of fixes offered in Dave's submission, our fix
19 listed on our terms and conditions was one way, listed
20 on our submission here is another. We're not that
21 fussy precisely how it gets fixed, we want it fixed.

22 No. 5, the area of concern planning, and
23 this one has to do with the fact that some areas of
24 concern are more concerned than other areas of concern.
25 The area of concern planning is somewhat arbitrary in

1 that it does not in reality balance competing
2 interests.

3 And the testimony on that, first of all,
4 was Judy Skidmore 54676:

5 "There are 29 regions across Ontario
6 right now and how these areas of concern
7 are put in place I cannot find. I've
8 asked in writing for the prescription and
9 I've not received that prescription. So
10 it's pretty well up to anybody right now
11 how these areas of concern are put in
12 place."

13 That's not good enough, they're impacting
14 significantly on different sectors.

15 An exchange between Sayeau and Multimaki.
16 This has to do with -- No. 2 point in our evidence has
17 to do No. 1 in the conclusion.

18 "Mr. Multimaki, the initial position
19 that the Chamber of Commerce started with
20 several years ago was two kilometres and
21 no cut."

22 We're here talking about an area of
23 concern around Little Vermilion and I don't want to get
24 into that squabble too far.

25 But the point that Mr. Sayeau made here

1 on 26337, question to Mr. Multimaki:

2 "And was the Chamber of Commerce part
3 of that negotiation process."

4 They negotiated it from a mile down to
5 240 down to 120.

6 "And was the Chamber of Commerce
7 part of that negotiation process?"

8 "MR. MULTIMAKI: No, they were not."

9 Very clear. The other piece of evidence
10 comes from -- I believe this is an undertaking of MNR
11 but it has to do - and I'm prepared to throw this away
12 if anybody doesn't like it - it had to do with the area
13 of concern for bald eagle habitat and moose licks and
14 it gave a particular size, somebody's allocated a size
15 to it.

16 All I'm trying to illustrate here -- yes
17 or no, because I don't have a number on this one,
18 folks.

19 MR. BERAM: I think at this point one
20 concern I have is that you identify it for some future
21 reference.

22 MR. AXFORD: I can identify it.

23 MR. BERAM: Can you tell me where it came
24 from, specifically where you got it, perhaps the reason
25 for it, some means of identifying it.

1 MR. FREIDIN: Is it an exhibit?

2 MR. AXFORD: I believe it is, I just
3 can't identify the number on it, that's all.

4 MR. BERAM: Well, perhaps we can take it
5 up at the break--

6 MR. AXFORD: Okay.

7 MR. BERAM: --and try to identify it
8 somehow.

9 MR. AXFORD: The only point I'm trying to
10 make on it is that somebody has identified how
11 physically big an area of concern is for those things.

12 The area of concern for the case of this
13 lake it sort of had some movable boundaries, and our
14 point is that the Board must rule that all areas of
15 concern must be negotiated with the party bringing the
16 concern forward.

17 Pat's point in the discussion of the
18 Chamber of Commerce being involved in that area of
19 concern was that it was setting a precedent and they
20 wanted to be involved. Multimaki agreed they weren't
21 involved, and it's not a healthy process if the people
22 that want to talk about that area of concern can't do
23 so.

24 No. 2, that the areas of concern must be
25 proportionate in size to significance of a possible

1 breach, and I'll go back to the evidence on that. This
2 has to do with this Little Vermilion thing and the
3 Chairman summed it up:

4 "And so they reduced their demands
5 down from two kilometres down to 240 with
6 a two-zone 0-120 and 121-240 and then
7 also agreed with how the actual cutting
8 would take place in the second zone.

9 "A. That's correct."

10 The only point there is that the
11 difference between a moose lick and an eagle's nest and
12 a tourist camp should be spelled out a little better in
13 the size of the area of concern, you can't deal with
14 them all as a fixed limit. The area of concern has to
15 reflect the hazard or the significance of the possible
16 breach, and that's all we're trying to say in the
17 conclusion.

18 Submission No. 6, MNR has had a tendency
19 to manage with blinders, to plan for constraint and
20 control as opposed to plan for opportunity enhancement.
21 Although utilization rules apply to extraction
22 communities -- pardon me, although utilization rules
23 apply to extraction companies - and the example that
24 there isn't to be a waste of fish or fiber - no such
25 approach appears to apply to public money and time

1 spent on timber management.

2 We believe MNR needs to move from
3 restrictive to permissive approaches. And you've had
4 some testimony with regard to the fact that there are
5 penalties for wasting timber. We think there ought to
6 be some penalties for wasting public time and energy
7 and money. If you can't use timber management planning
8 to do things or to provide opportunities, then you're
9 wasting it.

10 Our evidence to start off with Judy
11 Skidmore, the evidence on avoidance was 54673. The
12 question to her:

13 "Q. What are the opportunities? Why
14 was it in quotations? What's special
15 about that?"

16 Her answer:

17 "Within the community now I guess
18 we're looking quite often at avoidance
19 and I think that's what's happened."

20 Doug Scott 53953:

21 "Very little mention is made of the
22 potential economic and social benefits of
23 timber management on the communities
24 immediately adjacent to the forest
25 resources."

1 Doug Scott again on the issue of
2 utilization:

3 "The planning and management of our
4 forests should provide optimum economic
5 returns particularly to the communities
6 that are directly adjacent to the harvest
7 areas.

8 "It's interesting though that in the
9 land use plans that were produced as part
10 of the evidence at the hearing, when you
11 get into the mining sector, mineral
12 resources, the purpose in those
13 documents very clearly states that the
14 resources will be extracted in a way that
15 provides maximum benefit to the local
16 community. That parallel statement is
17 not there for forestry. I'm not certain
18 why the distinction is made but we feel
19 it should be."

20 Doug Scott again:

21 "You don't have to be a rocket
22 scientist to be at least aware of those
23 things and they were not considered
24 and this document doesn't consider them
25 either and, of course, to accomplish that

1 we suggest it is common practice when
2 doing environmental statement reports to
3 produce constraint maps where you
4 identify those things that are there
5 today whether they be natural environment
6 components or tourist lodges or whatever
7 that should be protected from the
8 negative impact from the proposal, and we
9 suggest the same attention should be
10 given to the preparation of opportunities
11 maps.

12 "The opportunity we're dealing here,
13 the whole environmental, the current
14 environmental movement is away out in
15 right field on a pendulum and I don't
16 think we quarrel with that, we just say
17 it's great to see that kind of attention
18 paid on natural environment, but let's
19 pay the same attention to the social and
20 economic environment, let's identify
21 opportunities, let's enhance those
22 opportunities where we can."

23 Doug Scott, that's active right across
24 the northwest region on these kinds of issues. Doug
25 Scott again:

1 "In those situations the MNR or
2 others were thoughtful enough to keep in
3 mind this wish list of the needed road
4 length and as the area was opened up for
5 forest operations the primary roads were
6 located in a way that made a final
7 construction of secondary highway much
8 less expensive and much less damage to
9 the environment.

10 "The right-of-way was already there,
11 the gravel sources were selected and were
12 particularly selected and the road bases
13 were there."

14 And this had to do with a road, I
15 believe, that ran up near Ignace. So he said that it's
16 good that MNR recognized that there was some aspiration
17 for a road there.

18 So he goes on:

19 "So in any major road construction we
20 should consider very carefully as to what
21 other opportunities it could enhance, and
22 there's none of that in this document
23 today and I can tell you that the forest
24 management planning today doesn't
25 consider those subjects whatsoever."

1 And he went on to talk about a meeting at
2 the Red Lake council where he was listening to a
3 presentation on a road -- on a timber management plan
4 and he made some comments on it, and I'm going to go
5 over this in the next submission also but I'll read it
6 here:

7 "I was at a meeting at the Red Lake
8 council two or three months ago and the
9 district manager of forestry, I don't
10 remember what he was, from MNR was
11 presented a plan for Crown management
12 unit and I didn't hear the bulk of his
13 presentation but the council, one of the
14 enginners for the council invited me to
15 comment since they knew I had involvement
16 with this.

17 "And I asked the gentleman in planning
18 his road network, we were all aware that
19 Red Lake was anxious at some point to
20 have another road link to Winnipeg,
21 that's public knowledge, it went on the
22 region, and I asked: Because the Crown
23 management unit lay between Red Lake and
24 Winnipeg whether he had given that any
25 consideration in locating the primary

1 roads in the management unit? And he
2 said: No, he hadn't.

3 "I said: There's some lakes in that
4 Crown management unit. Have you
5 identified which of them might lend
6 themselves to cottage development?

7 "A road is a necessary component for
8 most people for cottages, however, the
9 cottage owners have to be able to afford
10 to maintain the road in the future, so
11 it's very critical if a road is going to
12 be built in the area that it be close
13 enough that the net cost of future
14 maintenance for cottage access is
15 affordable. No, he hadn't considered
16 that.

17 "There are a number of rivers in the
18 area with rapids indicated on the
19 topographic maps and I asked, had he
20 thought of having road access close to
21 some of these waterfalls because they had
22 potential for small hydro development,
23 and the answer again was no, he hadn't
24 considered any of these factors.

25 "I said: Well, I'm sorry, I think your

1 plan is flawed."

2 MR. BERAM: Mr. Axford, I hate to
3 interrupt you, the reporter is having some difficulty
4 keeping up with you, perhaps --

5 MR. AXFORD: Oh. He said:

6 "...Well, I'm sorry, I think
7 your plan is flawed."

8 Here were three major opportunities,
9 well-known, most of them current provincial policy
10 certainly encouragement of small hydro. Essentially,
11 Doug Scott's position was that if you're not looking at
12 those opportunities you're doing something wrong.

13 And our point No. 5 on the evidence comes
14 from the former Commissioner of the Northern
15 Environment, Ed Fahlgren, and his written submission to
16 the Board under how plans are made.

17 "More and more today it's important to
18 look at the opportunities and
19 possibilities for advancement offered by
20 enlightened, planned decisions as opposed
21 to the old view of what existing activity
22 a planning decision might detrimentally
23 affect."

24 A broad range of people agreeing that
25 there's something fundamentally wrong with the issue of

1 opportunity.

2 So our conclusion, the Board must include
3 in its terms and conditions a requirement that MNR
4 evaluate the best utilization of scarce provincial
5 resources during the timber management process in order
6 to facilitate the opportunity for socio-economic
7 enhancement with other desirable and beneficial
8 community activities and objectives. Pretty
9 straightforward.

10 Submission 7 carries that thought a
11 little further and deals specifically with the road
12 linkages.

13 It's a serious flaw that timber
14 management, although being a very valuable development
15 tool, is almost unused for linkages

16 The first piece of testimony on 54936
17 came from Ed Fahlgren and what he was talking about was
18 the sphere of influence around a community, and if you
19 remember in his evidence he had the Kayahana Tribal
20 Study where it had a number of maps with the overlays
21 and it showed how a community had a sphere of influence
22 and had some thoughts and aspirations about where they
23 go and what they do and where their range of influence
24 is. And in his statement it said:

25 "But looking in the future what

1 concerns me is what we do to maintain
2 this community and to protect its
3 sphere of influence on which it's become
4 dependent."

5 So in the area of linkages, what our
6 concern is that within a sphere of influence that most
7 communities aspire to have, they don't have influence
8 on road linkages simply because it hasn't been dealt
9 with well under the timber management process.

10 And I'm going back to the statement Doug
11 Scott made at the Red Lake council meeting - I'm not
12 going to read it all again - but the point was, that he
13 asked specifically if it dealt with long-term linkages
14 and they admitted it did not, and his statement at the
15 end again, I'm going to say:

16 "Well, I'm sorry, I think your plan
17 is flawed."

18 Go to 54884, testimony of Pat Sayeau,
19 same issue arose. And I think you might have noticed
20 I've tried to maintain our evidence to things that have
21 a lot to do with the Red Lake area because we can be
22 very specific about those, we haven't tried to pick on
23 other areas and we haven't had a lot of participation
24 from communities in the northeast. We tried to pick on
25 things that we know something about.

1 So here it is on roads from Pat Sayeau:

2 "So these local aspirations are well
3 known and the idea of a road to Winnipeg
4 or a road to the west or an exit to the
5 west is widely articulated."

6 It's a widely felt local need, if I can
7 put it that way. And I think what we're saying is that
8 there should be some way in which that local aspiration
9 can be taken into the timber management planning
10 process because the timber management planning process
11 is the first opportunity, if I can put it that way,
12 it's the first occasion on which roads are built.

13 So our conclusion is that the Board must
14 order MNR to be much more sensitive and aware of
15 potential corridor linkages when the role of timber
16 management road planning operates within a community's
17 sphere of influence.

18 And, furthermore, that MNR be required to
19 consult with others, including the Ministry of
20 Transport, to ascertain such potential corridors. And,
21 furthermore, that long-term corridors must be indicated
22 during the open house process.

23 And you'll notice on all of our
24 submissions where it says conclusion it says reference
25 T&C number such and such. In this case here our

1 reference is No. 13:

2 "That mechanisms must be created to
3 concern long-term link up of roads that
4 open up new areas for harvest (e.g. Red
5 Lake, the road to Winnipeg)."

6 We have tried in each case to reference
7 them and again, if you'll remember, our framework for
8 delivering T&Cs was quite different than the others, we
9 tried to indicate in general terms what we thought is
10 appropriate and we were prepared to leave it to the
11 Board's discretion how it would be played out.

12 So quite often the conclusions we have
13 given you here aren't precisely the same as the terms
14 and conditions. We tried to be as broad as possible
15 and say: Look, maybe it's not quite that way, maybe
16 it's a little bit another way, but in general terms you
17 have got to be sensitive to these sort of issues. And
18 if we get that message across I think we've done our
19 job.

20 Submission No. 8, that regulation by
21 itself is not adequate for any normal management of
22 anything, regulation alone should not be the only tool
23 of timber management either.

24 The use of ordinary contract law where
25 the parties most affected themselves resolve small

1 issues in the way that very best suits their needs
2 should be considered when appropriate. And we want you
3 to read when appropriate to mean much more often.

4 We've got a number of pieces of evidence
5 on that and what we're suggesting to you is that
6 contract use, we've got some examples where it worked,
7 we've got to do more of it.

8 And, again, this one's kind of
9 disappointing because we were one of the few parties
10 that made noises in this area and yet it resolved so
11 many problems and it's something that is actually
12 working out in the field.

13 Hugh Carlson's testimony, 54801, the
14 fixes that are offered for breaches are pretty weak.

15 "Q. My understanding is that after
16 the trespass occurred that the area
17 was regenerated immediately in the spring
18 of '89 to attempt to mitigate or correct
19 the unfortunate trespass?

20 "A. The problem, of course, in this
21 country is to get a tree big enough that
22 you and I can't see over it. It takes, I
23 have only another 50, 60 years to go...",
24 he meant in life,

25 "...and I don't know if I'll live long

1 enough to see those trees tall enough so
2 that I won't be able to see the mess
3 that's in there."

4 The fixes that are out there in
5 regulation are weak if you're dealing with the
6 regulation alone.

7 Secondly, some testimony from Fahlgren in
8 his submission that such things as contracts were
9 contemplated years ago under resource management
10 agreements.

11 "Such agreements might possibly be
12 discussed, flushed out or agreed to
13 within an improved stakeholders group and
14 formalized by government. The key
15 element of resource use agreements would
16 be up-front discussions and decisions of
17 benefit allocation prior to proceeding on
18 development. Such use of these types of
19 agreements would offer substantially
20 improved community and northern
21 empowerment with the added benefit of
22 clarifying access and ensuring the
23 security of resources for Industry."

24 So this was contemplated many, many years
25 ago and it just isn't something that a lot of people

1 have spent a lot of time on.

2 Testimony from Doug Scott that such
3 contracts could apply to government too, and it's
4 53948 - find the beginning of a sentence here - the
5 issue here is when government signs a contract and the
6 forest management agreement says we're going to
7 regenerate at a certain per hectares a year and
8 whatever it is and we are going to provide the
9 herbicides and so on and, however, we're going to sign
10 a contract with this forest company to, or you do this
11 and we pay this.

12 Now, when you sign a contract anywhere
13 else you're obliged to meet the terms of the contract
14 or suffer some punishment or penalty and we think it
15 should apply here.

16 So the only point here is that contracts
17 are usable, they're used every day in the world, but we
18 don't use them readily either with the government side
19 of timber management or between the various people that
20 are affected by timber management.

21 I'll give you two more examples, one from
22 a fellow by the name of Koslowski who's a timber
23 harvester up in the Red Lake area used to be a timber
24 harvester. Mr. Koslowski:

25 "The tourist operator and myself, we

1 got together...", this is, sorry, 54588:

2 "The tourist operator and myself, we
3 got together with the Ministry and we
4 have a really good relationship in the
5 last three or four years, it's been
6 excellent. I think that's -- just so
7 people know what it is, that's Little
8 Vermilion Lake and there's an outpost
9 camp and a main camp. And actually once
10 they see the problem I had, they had the
11 same problem and I had their problem and
12 we were able to sort it out."

13 You can make a deal with people, an even
14 clearer one was Hugh Carlson, and here's a guy that's
15 not very happy with Boise Cascade from time to time.

16 "As an example I have is that on the
17 south side of Telescope Lake a few years
18 back...", Boise Cascade is the operator
19 there,

20 "...and I had identified an area of
21 concern and I'd been dealing with the
22 local forester at the time and things
23 were sort of in neutral and I finally got
24 a call from one of the fellows at Boise
25 in Kenora and said: Hey, you know, this

1 thing is being held up. How about if I
2 come up to Red Lake and see you and see
3 if we can work something out.

4 "I happened to be going to Kenora that
5 next day and so I offered to stop in and
6 see him. In a matter of two hours we
7 were able to hammer out a deal between
8 the two of us, that I mean prefaced at
9 the start of the meeting I told him that
10 I would rather he was a hundred miles
11 away from me, but the fact was that he
12 was there, and we were able to work out
13 an agreement where he would have no
14 all-weather roads within a mile of the
15 area and he would harvest the blocks
16 near the lake during the winter months
17 and we have a written agreement and we
18 both signed it and we took it to Natural
19 Resources and said: Here is what's going
20 to happen, and they've honoured this
21 agreement so far, and I keep a close eye
22 on them."

23 MR. CASSIDY: Do you have a page number
24 for that, Mr. Axford?

25 MR. AXFORD: Yeah, that's 54771 and 72.

1 MR. CASSIDY: Thank you.

2 MR. AXFORD: And as we come into the
3 submission on regional versus district you're going to
4 see one such agreement that did not end up being
5 endorsed by MNR, but here are some things that MNR has
6 agreed with and that are working and it's a fix that
7 should more readily be used.

8 So our conclusion is that contract use
9 offers great potential to resolve specific local issues
10 and the Board should order MNR to encourage greater use
11 of this tool.

12 Furthermore, the Board should order MNR
13 to create several generic contracts for use in
14 consideration of various resource extraction interests
15 such as tourism and trapping. And we've referenced our
16 term and condition No. 15, and I'm just going to -- I'm
17 going to read you this to show you the difference
18 between the original T&C and what we said today.

19 No. 15:

20 "Completed plans must allow the use of
21 civil and contractual law to enforce
22 agreements."

23 What we said today, it's the same basic
24 idea, but we've gone a little further and said, not
25 only should you do it, you should encourage it by

1 getting a couple of generic things ready for people to
2 kind of look at. You almost have to take an advocacy
3 role in allowing these things to happen.

4 Submission No. 9, in our submission,
5 partly because of the aversion to do socio-economic
6 analysis locally, skills and training, sensitivity and
7 understanding for such work is lacking in MNR field
8 personnel. This is the whole issue of training has to
9 do with our terms and conditions No. 8 and 9 which
10 essentially say:

11 "Ministry internal personnel must
12 undertake an educational process and that
13 there's some upgrading required."

14 And I'm going to start off with, in this
15 case, the written submission of Ed Everly -- pardon me,
16 the written submission of Ed Fahlgren - two Eds Ed.

17 There's a certain amount of history in
18 it.

19 "But the Ministry was not mandated or
20 staffed to plan comprehensibly and its
21 reports for the north paid scant
22 attention to the socio-economic and
23 natural environmental consequences of the
24 prescriptions that they advocated."

25 Pretty straightforward. He said it quite

1 a few years ago, and he comes back a little later on
2 and says he believes it still.

3 Here's one from Art Gouriluk, if you
4 remember he was the trapper that was kind of a
5 part-time trapper, he was sort of semi-retired and he
6 was talking about how the MNR people involved
7 themselves in trap line management versus timber
8 management.

9 And he - I see you're going to like this,
10 - this is how good Roy Sidders was. Nice guy, made a
11 good effort up there, he was the forester in the Crown
12 unit.

13 And they were talking about the fact that
14 Roy came out to the trapline and looked to see how
15 things were going. And the question:

16 "That was a voluntary trip he made, I
17 take it, you asked him to come or how did
18 that come about?

19 "A. Oh, we discussed it and Roy said I
20 would certainly like to make the trip
21 with you and he offered to come again."

22 So the point was that it was voluntary,
23 it's not process driven.

24 Testimony of Ed Everly 5461 - something
25 or other I haven't got the tail number on it it's cut

1 off - and this has to do with the no tools or skills:

2 "Q. How did you deal with the social
3 and economic effects when it had
4 long-term implications because if you're
5 dealing with an open house on a
6 day-to-day basis what, if any,
7 consideration was given to what your
8 decisions would mean for 10 years or 20
9 years?

10 "A. There was never -- there was no
11 formal way, no clear way of measuring.
12 You could determine rather easily, I
13 guess, the value of the wood at the mill
14 or in the area. We couldn't -- we didn't
15 have a specific way of measuring the
16 impact or the value that it had to, say,
17 on the tourist operator, for example. We
18 had to take their figures and we could do
19 some very gross calculations, so many
20 people and so many dollars, but to
21 actually analyse it we couldn't do it.

22 "Q. Why couldn't you do it, because it
23 was not your mandate or you didn't have
24 the facilities?

25 "A. It wasn't our mandate or we didn't

1 have the skills or knowledge or staff to
2 do it."

3 Pretty straightforward. Here's a fellow
4 that's spent, again, years and years in the Ministry of
5 Natural Resources, had just come off being a district
6 manager.

7 "...we didn't have the skills or
8 knowledge or staff to do it."

9 54457, a slightly different approach to
10 the same kind of a problem some testimony from --

11 MADAM CHAIR: Excuse me, Mr. Axford. Did
12 I miss your reference to Mr. Everly's statement?

13 MR. AXFORD: No, you didn't. Because I
14 clipped the edge of it off, it's 5461 something and the
15 last number is missing.

16 MADAM CHAIR: Oh, okay.

17 MR. AXFORD: I was rushing to fast with
18 my photocopies. You can have the page if you want it,
19 here.

20 MADAM CHAIR: Mr. Beram will get the
21 number for us. That's fine.

22 MR. AXFORD: Okay, I'll leave that one to
23 the side.

24 MR. BERAM: No, we will deal with it.

25 MR. AXFORD: Okay. This had to do with

1 the testimony of a tourist operator about who makes
2 decisions about areas of concern and limitations and
3 things like this, and I think it was -- counsel was
4 examining him and counsel said:

5 "In some cases you're aware that the
6 biologist, the wildlife biologist might
7 make a decision in terms of what's
8 required for moose or other wildlife
9 species?"

10 His answer is:

11 "Yes."

12 And then a little further down:

13 "The 30-metre reserve is not adequate
14 enough, it's good for fisheries in
15 certain areas but that's not what we
16 needed to protect."

17 And his only point there is it depends
18 who makes the decision. That's all I'm trying to
19 illustrate on that one.

20 No. 5 is an exchange between myself and
21 Mr. Kennedy with the limit -- having to do with the
22 limit of attachment to community of the people making
23 decisions, and the question was:

24 "Is it a practice of the Ministry
25 that the Ministry would from time to time

1 offer housing of various descriptions to
2 their employees?

3 Mr. Kennedy's answer:

4 "It was a practice that there were
5 housing opportunities made available to
6 many government employees on the basis of
7 attracting individuals to the community."

8 And the only point of that one is that if
9 the employees are coming from out of town and come
10 because they've got free housing and that sort of
11 thing, there's some little to their attachment to the
12 community.

13 And I think, I agreed - and Hartley
14 responded to that, that he ended up buying a house.
15 That's healthy that we have that happen, but if people
16 make decisions that are sort of parachuted in, that's
17 really not healthy for a community.

18 No. 7, Axford and McNicol. This has to
19 do with the fact that what expertise was built into the
20 person before they got there, and here's how the
21 testimony went. Axford:

22 "Is there any socio-economic
23 qualifications required of these
24 individuals on these planning teams?

25 Mr. Kennedy -- pardon me, I'm one behind

1 myself here, it's Axford and Kennedy, not Axford and
2 McNicol.

3 "Is there any socio-economic
4 qualification required of these
5 individuals on the planning teams?"

6 Answer, Mr. Kennedy:

7 "We have led evidence, Mr. Axford,
8 that there are no set qualifications for
9 planning team members."

10 And this is the follow up of it. The
11 question is:

12 "Is there anyone on the panel that
13 would offer that they have background
14 training or experience to make a
15 professional economic judgment of the
16 economic impacts on extraction
17 communities?"

18 Mr. McNicol:

19 "With respect, Mr. Axford, no to that
20 question, but I would suggest I have
21 learned more about the economics of
22 certain business operations in my
23 experience working for the Ministry than
24 I ever learned at university."

25 And I wanted to stop on that one for just

1 a second because it's important to understand that what
2 he's saying is that because I worked up there I now
3 know something. He didn't come with anything, but what
4 he knows is no different than what somebody that is
5 already living in the community.

6 He says I've learned more about the
7 economics while I've been working there, basically.
8 I'm going to read it again to make it clear.

9 MR. BERAM: Mr. Axford, just to get the
10 reference straight, this is with respect to the
11 evidence at item 6 page 26295; is that right?

12 MR. AXFORD: 26296.

13 MR. BERAM: Okay.

14 MR. AXFORD: Axford and McNicol and it's
15 Mr. McNicol responding:

16 "With respect, Mr. Axford, no to that
17 question, but I would suggest that I've
18 learned more about the economics of
19 certain business operations in my
20 experience working for the Ministry than
21 I learned at university."

22 He's equally qualified with anybody else
23 in the community, he showed up.

24 Mr. Sayeau 26290:

25 "The point is that there's a need for

1 such expertise. In our cross-examination
2 we are not attempting to support parks or
3 tourism values, simply we're trying to
4 illustrate the necessity of balancing
5 social and economic values within the
6 forest management timber harvesting
7 process."

8 Mr. Fahlgren, 54952, on the possibilities
9 of socio-economics and the skills as an educational
10 tool. And he says:

11 "It's an educational thing but
12 if it's initiated with positiveness of
13 trying to make it work I think you will
14 be surprised how well it will."

15 What he was talking about, I think I
16 should back up. I have to find the beginning of the
17 sentence here.

18 "I think that this is something
19 I would like to see enlarged or developed
20 with the purpose that the stakeholders
21 could become an addition to this planning
22 and keep the community aware of what's
23 going on. It's an educational thing."

24 So the point is that people that are
25 involved in the discussion educate those around them

1 and:

2 "...if it's initiated with positiveness
3 of trying to make it work, I think you'll
4 be surprised how well it will."

5 It's important that you not only train
6 the people that are making the decisions but the
7 communities as well.

8 No. 10, Pat Sayeau on the need for better
9 tools than simply weighing paper, and this was a very
10 colourful piece of testimony, 54885:

11 "Q. Do you have suggestions how MNR
12 or understanding as to how MNR considers
13 the information it gets at open houses
14 and how they should deal with the
15 information they get at open houses?

16 "A. How they get it in spite, you
17 know, you can talk to them and so they're
18 getting information that way verbally,
19 but I don't think that there's a formal
20 method for dealing with the verbal input.

21 "Q. All right.

22 "A. So they also get it by means of
23 sheets, input sheets. You can write your
24 little note. Now, how they deal with
25 input sheets I'm not all that clear, but

1 I do know that on at least one occasion
2 it was suggested that: Hey, listen,
3 we've got 24 pieces of paper that say
4 this road should be open and 14 that say
5 it shouldn't be. You better get those
6 made equal and we come back here to this
7 room and went to the end, grabbed a bunch
8 of input sheets, ran around town, got a
9 bunch of guys to sign it so that we had a
10 pile as big as the other pile."

11 So the point is that if there's that kind
12 of lack of training that it's simply the weighing of
13 input sheets or the counting of them to decide what to
14 do, it's not acceptable. You don't need a lot of
15 training to count the sheets.

16 No. 11, the lack of understanding and
17 training, it comes from 54855, and it's Pat Sayeau
18 again:

19 "We had a tremendous problem getting
20 the Ministry of Natural Resources to
21 recognize the economic impact of that
22 industry...", he's refering to tourism in
23 this case.

24 "I remember at one point a comment was
25 made: Well, so what if those lakes get

1 accessed by roads, they'll just turn into
2 roadside operations. But we said: Why
3 don't you realize the significance of
4 that, that means a bed which originally
5 sold for \$140 U.S. per night is going to
6 sell for \$30 a week or 30 -- yes, \$30 a
7 week, you know, and the roadside goes
8 cheap."

9 So the point was that -- and I think in
10 this case it was on his written testimony also, I
11 believe it was Eric Keest that was involved in that
12 discussion.

13 The point was that if you're going to
14 deal with people that were making decisions about
15 socio-economics they had to really understand what they
16 were doing.

17 So our conclusion, the Board must require
18 MNR to cease making decisions with socio-economic
19 implications until a reasonable share of their
20 personnel have completed some outside training, or
21 until - I guess a little insert here - or until MNR has
22 obtained some outside socio-economic advice on the
23 issue in question.

24 It's just a little bit ambiguous there,
25 so maybe if you want to insert in that, or until MNR

1 has obtained outside socio-economic advice on the issue
2 in question.

3 Submission No. 10, that the lack of a
4 land use plan in the West Patricia area is a serious
5 problem and MNR must immediately adjust timber plans to
6 accommodate broader land use issues when managing
7 timber in the northwest.

8 And I think we've had a number of pieces
9 of testimony on the land use plan and the difficulties
10 it's posed for us particularly in the northwest. To
11 begin with the evidence is a discussion between Sayeau
12 and Kennedy on 26382.

13 "MR. SAYEAU: Q. But that's the point
14 precisely, have the land use guidelines
15 been approved?

16 "MR. KENNEDY: A. No, it's quite clear
17 that there has not been an approved
18 district land use guideline for the Red
19 Lake District.

20 "Q. Now, why haven't they been
21 approved?

22 "A. I believe we've led evidence on
23 that in other panels and it relates to --
24 in short it relates to a decision of the
25 Minister at the time that the Royal

1 Commission on Northern Environment was
2 taking place.

3 "Q. So in the meantime who does the
4 balancing act, that's what I want to
5 know, who is responsible for the
6 balancing act, because the timber plan is
7 being put forward, it's being prepared,
8 who if not the team does the planning act
9 and the balancing?

10 "A. Quite clearly the Ministry of
11 Natural Resources is left with the
12 responsibility to do that balancing as
13 you refer to it, and the planning team as
14 a whole are the individuals that are
15 required to do that and they are both
16 accountable, they are accountable for
17 that balance."

18 So our point in that one was that for the
19 lack of the land use planning there's still a
20 responsibility out there for other resources that goes
21 along with timber management planning now.

22 No. 3, ah, exchange between Axford and
23 Martel, difficulty of using timber management to do
24 land use work, 26389.

25 "MR. AXFORD: I think the point was,

1 Mr. Martel, it's extremely difficult to
2 produce any kind of balancing act to make
3 those value judgments and the only
4 mechanism we have today to assist us,
5 because of the failure of strategic lands
6 use plans, is the timber management
7 planning process. There seems to be no
8 other. So we can only address what we're
9 given and we choose to address this Board
10 because it offers one alternative to view
11 the socio-economic balancing act that's
12 required over the next few years as we
13 really move into the frontiers of our
14 province and the things that we do in the
15 frontier today are under much more
16 scrutiny than they were years ago, so
17 we're trying our very best to defend our
18 position and defend our right to
19 something as we go along. That's the
20 only mechanism we have to do it."

21 And No. 4 is Dave McLeod the Director of
22 Education on the urgency of getting planning in place
23 and the potential of the stakeholders committee to do
24 so, 54820:

25 "Okay. I guess the last -- the fifth

1 point that I think needs to be tabled in
2 regards to the forming of a stakeholders
3 committee is the timeframe. Again, one
4 of our earlier speakers mentioned that we
5 live on a bit of a frontier, it's largely
6 untouched at this point in time and if
7 there is ever a great opportunity to make
8 something work it would be here because
9 we do have a heck of a lot of decisions
10 yet to be made and maybe this isn't a
11 case of putting or closing the barn door
12 after the horse got out. So I think that
13 the timeframe is critical and that this
14 issue of the stakeholder be acted upon
15 and formulated very quickly."

16 So our conclusion, the Board must rule
17 that a timber pilot stakeholders committee be struck at
18 least in the Red Lake area to attempt to mitigate the
19 unanswered, conflicting and overriding land use
20 questions.

21 And the Board may want to consider a
22 broader area than that because the West Patricia land
23 use plan covered much more than the Red Lake area, but
24 certainly at least in the Red Lake area where there's
25 still activity, where there's still room to manoeuvre,

1 the Board has to rule that a pilot timber stakeholders
2 committee be struck to mitigate some of those
3 unanswered, conflicting and overriding land use
4 questions, because there seems to be no other mechanism
5 except timber management to deal with them.

6 MADAM CHAIR: Mr. Axford, this is the
7 time --

8 MR. AXFORD: Coffee.

9 MADAM CHAIR: Are you ready for a break?

10 MR. AXFORD: Sure.

11 MADAM CHAIR: Okay. We will be back in
12 15 minutes.

13 ---On recessing at 10:25 a.m.

14 ---On resuming at 10:45 a.m.

15 MADAM CHAIR: Please continue, Mr.
16 Axford.

17 MR. AXFORD: Thank you. I'm going to try
18 and speed up a couple of things here to make sure I
19 have a little bit of room at the tail end for
20 questions.

21 What we've said so far is that there are
22 some socio-economic problems and the evidence we've
23 seen doesn't seem to lead to too many socio-economic
24 solutions. And it's difficult because I don't really
25 know how much time to spend telling you there's

1 something wrong and I want to spend a little more time
2 with the possible solutions.

3 So submission No. 11, the timber
4 management process --

5 MR. MARTEL: Mr. Axford, I don't think I
6 should tell you what you should do, but my colleague
7 and I have a pretty good idea of where you show the
8 evidence, you know, you list them all. If you look at
9 No. 11, Multimaki saying -- we've heard these arguments
10 more times than you can shake a stick at.

11 So you might want to just reduce that
12 because I'm not sure that we're getting anything we
13 haven't heard over and over again.

14 MR. AXFORD: Okay. Thank you. That's
15 the help I needed.

16 This submission No. 11 has to do with the
17 timber targeting and the substantial consequences for
18 the other activities. And the evidence is there and
19 our conclusion was - and particularly in our reference
20 to term and condition No. 11 - and the Board must rule
21 that a review be made of the environmental
22 sustainability and compatibility of all forest user
23 activity prior to the further use of pre-existing
24 timber targets.

25 And it's clearly the Board's mandate to

1 deal with sustainability and we're very concerned about
2 that one with the preset of targets.

3 Submission No. 12, that the open houses
4 tend to take the average person down a garden path to
5 conclusions that the MNR is managing very well when
6 such may not be the case. And this has to do with a
7 piece of evidence that really hasn't had much play.
8 This is this - just a minute here, I've got to get the
9 right piece in front of me here - this was this
10 pre-agreed statement, and I don't know if you recall
11 this, this was the thing we were talking about at the
12 hearing in Red Lake that we were going to put Roy
13 Sidders on the stand and then we didn't have to because
14 we got the pre-agreed statement on this thing.

15 And there are six pieces of components in
16 here that match with the comments that MNR made about
17 what goes on at the open house. These were our
18 submissions on the problems in the open house and the
19 problems with the values map, for example, and we took
20 the conclusion that to be fairer and more educational
21 to a viewer there's some things that had to change in
22 that open house process.

23 MR. FREIDIN: What's the exhibit number
24 of the agreement?

25 MR. AXFORD: I might be able to give you

1 that. Just a moment.

2 MR. FREIDIN: Or was it just read in? I
3 don't remember.

4 MR. AXFORD: What we have done there, is
5 an agreed Statement of Facts -- yes, 1837.

6 MR. FREIDIN: Thank you.

7 MR. AXFORD: In No. 3 of our submission
8 12 I would like you to insert the word, instead of
9 "there was no guideline", it should say, "there were no
10 socio-economic guideline".

11 And with our conclusion we went a little
12 further than just this analysis up here. We said that
13 the Board might want to rule that an outside group
14 other than MNR should be provided some space allocation
15 to make their point at these open houses, because we're
16 not totally in agreement that what goes on there is
17 exactly what the public should see. Maybe there are
18 some other people that feel the same way.

19 And I'm just going to very briefly go
20 over these. Concern about the values map not showing
21 timber values because what you look at when you come
22 into an open house is this values maps. They show you
23 a whole bunch of values and the public is essentially
24 asked to do tradeoffs during the course of the open
25 house, they're asked to think about things. Well, if

1 you'd put a couple of trees on the map it might help to
2 understand that there are values are being traded off.
3 That's not on there.

4 No. 2, there is no graphic presentation
5 where a person can really see how much renewal there is
6 versus how much cutting is proposed. And that was a
7 concern, so it caused you to do a lot of digging, and
8 if you look at the map, the map had a whole bunch of
9 pink on it and the pink was a natural regen area and it
10 just said a regeneration map.

11 So it wasn't something where a person
12 could make a quick view of it and a quick and accurate
13 view and there are things that could be done to be
14 helpful.

15 Three is the socio-economic guidelines.
16 Four is the slide show having to do with some
17 socio-economic benefits. Our submission was the slide
18 show was prepared by people that didn't have
19 socio-economic background, weren't entitled to make
20 those statements.

21 No. 5 is the issue of the planning verus
22 doing. If you don't have a budget to do some of the
23 things, all the plans in the world are no good to you,
24 so there should be some indication in the open house
25 that everything is subject to budget. And I think many

1 of us assume that's the case, but the public doesn't
2 understand that.

3 And No. 6, the question here is that if
4 there's some question in the public's mind how
5 dangerous certain things could be maybe the margins of
6 safety planned for would be different, but there's not
7 some hint of danger as you go at these open houses.

8 I think MOE in their final argument also
9 addresses some of those issues.

10 Submission No. 13, regional MNR decisions
11 may very well be in substantial conflict with local
12 socio-economics and, furthermore, partly for lack of
13 analysis decisions may appear to be made in arbitrary
14 and capricious manner.

15 Both Everly and Sayeau testified how the
16 region had overruled some things in the district. What
17 we said in here is that -- we failed in attempts to
18 work out local solutions because of overruling. That's
19 not really good.

20 In No. 6 here - I'm going turn to it for
21 a second - Sayeau 54867 -- I'll do the one before No.
22 5. This is Sayeau at about the involvement of the
23 regional manager.

24 "It came to the point they were not
25 prepared to accept our bottom line. They

1 indicated we'd have to compromise. We
2 indicated that we wouldn't compromise. I
3 can remember them banging the table
4 and saying either we're going to
5 compromise or we'll cut this down to the
6 shore and you'll have nothing left."

7 If that isn't regional intimidation I
8 don't know what is. There are some limits to where
9 this thing should go and what Pat Sayeau said in his
10 answer:

11 "I don't think that the stakeholders
12 committee should be able to be challenged
13 above the district level. I think you
14 should work very closely with the
15 district manager and I think once the
16 district manager come to an agreement
17 this shouldn't be challenged by anybody
18 higher up.

19 "Q. I take it this relates to local
20 issues as opposed to larger ones?

21 "A. Yes. I think there are some
22 previous witnesses tried to get this
23 concept out, the concept of degrees of
24 decision-making. There were some issues,
25 foreexample, the closing of the road; the

1 local committee can agree to close the
2 road and I don't think the district
3 agrees to close the road --", pardon me,
4 "...the district agrees to close the
5 road, I don't think the regional manager
6 should be able to step in say: Well,
7 no, I don't want to start that kind of
8 precedent within my region I'm going to
9 overrule this."

10 So it's degrees of decision-making. So
11 our conclusion, the Board must rule that regional
12 interference with pre-agreed district local
13 socio-economic decisions when all other rules of timber
14 management have been followed that regional
15 interference is unacceptable; and No. 2, that regional
16 interference is sufficient alone to trigger an
17 environmental assessment bump-up.

18 And I'd like you to insert something
19 there in No. 2, and I didn't put it in because I wanted
20 you to write it in because this is the key to this
21 thing. To No. 2, it's sufficient alone to trigger an
22 unopposed environmental assessment bump-up.

23 Doesn't mean you get it, but it means
24 that MNR wouldn't deliberately oppose it. That's all
25 it means and it's a mechanism for getting the thing

1 into some other negotiation court without opposition.
2 You can oppose it once you get into that forum, but you
3 wouldn't oppose the fact that it should go to another
4 forum.

5 No. 14, and it's a fairly important point
6 with our group, it's the issue of power and authority.
7 And our submission is that authority afforded to MNR's
8 proposed citizens committees appear to be minimal and
9 it's unclear at best. It needs to be very strong
10 particularly when local consultation may be
11 substituting for the lack of approved land use
12 planning.

13 And we spent a lot of time on the issue
14 of authority. I would commend to you these pieces of
15 evidence but I think you should look at them all
16 individually. And Fahlgren ended the thing, we've got
17 No. 15 on here, one of Fahlgren's submissions that
18 there is improvement needed but he not only normally
19 talked about the authority, he said:

20 "The Board must have courage to rule
21 on it."

22 So it's beyond the issue of needing it.
23 He said you've got to have some courage to rule on this
24 thing.

25 The one thing I want to do is No. 13, Ed

1 Everly and it's 54647, Ed Everly responding to the
2 issue of appeal.

3 "I don't know. I think there's too
4 many levels of appeal and people can drag
5 things on forever. And if it's -- again,
6 depending on the issue, if it's an issue
7 that's primarily affecting a local
8 community, the local issue, there
9 shouldn't be any appeal."

10 And this is a response to my friend Mr.

11 Freidin.

12 "That's what we in the community want,
13 that's what the decision made, the
14 stakeholders made that, the stakeholders
15 committee made that decision, they were
16 appointed or elected or however they got
17 on and they're accountable to those
18 people and they say they shouldn't have
19 any avenues if you don't like what I say,
20 I'm not going to run off and talk to
21 anybody else."

22 What we're trying to do is drive that
23 decision level down into the local community and to
24 make sure it stays there. We want to make sure there
25 are some limits of appeal. There are appeals but there

1 are some limitations to it for practical purposes.

2 And, again, the difficulty here is because of our
3 structure. I don't think we've had adequate time to
4 talk out the ways that you would deal with that.

5 So we've made some conclusions in it and
6 the conclusions are that, you know, if you look at that
7 evidence, that you want to have local committees for
8 local activity and it can't overrule something that is
9 already a provincial policy, it can't do that, but it
10 can do things that are local, and once it makes a
11 decision on local it should not be challenged and it
12 can't -- it's got to freeze out that outside
13 interference and it can't function without the
14 acceptance that it be local.

15 So here's our conclusions. The Board can
16 and should rule that a local citizens committee should,
17 No. 1, have an authority level greater than the
18 district manager in socio-economic decisions; No. 2,
19 less than a district manager on issues of written
20 regulations and guidelines; 3, equal to a district
21 manager on all other issues.

22 Furthermore, the Board must order that
23 the local citizens committee be primarily elected and
24 appointed, because the board's got to be accountable.

25 We recognize this accountability principle so we would

1 like to have that board elected and then appointed by
2 MNR or whoever it's going to be, it could be MOE that
3 would appoint it, but it's probably MNR.

4 So we want them elected so they can be
5 turfed out by the people if there's something wrong.
6 And furthermore, the Board must rule that a mass
7 resignation of more than 50 per cent of any citizens
8 committee over an issue of principle must trigger a
9 request.

10 And, again, I've left it out and I would
11 like you to write it in, a request for an unopposed
12 bump-up to a full EA. And all we're asking is that MNR
13 agree ahead of time. If you've got this massive
14 resignation you're not going to out and out oppose a
15 bump-up. We'll deal with it when we get there, we'll
16 all be there and we'll all make our case, but you're
17 not going to oppose the possibility of a bump-up.

18 So we haven't asked the Board to rule on
19 something that it doesn't have authority to rule on,
20 we've have asked for a very simple ruling here. But I
21 certainly would like you to spend some time on issue 14
22 and walk through the testimony that we have there.

23 No. 15, when the Board considers approval
24 of a Class EA exemption they should rely in part on the
25 character of the proponent. We spent a lot of time

1 looking at the evidence of the facts and the way things
2 are done, but beyond those facts, beyond that sort of
3 thing, the Board has to consider what kind of a
4 character they're dealing with and our submission is
5 that character and corporate personality then is fair
6 game.

7 In our case we don't believe that MNR's
8 character and personality is exactly credible. Their
9 people may be well principled people, in many cases
10 they're very good people and quality people who made
11 big efforts. I think Roy Sidders showed up as a guy
12 that had, but the process seems to create a corporate
13 personality that's not reliable or credible.

14 And I think there are a number of people
15 that talked about that kind of a problem. Bill Coppen
16 was quite good, he was one of the tourist operators on
17 the amount of time he spend worrying and fighting about
18 the MNR and all of the things they do. Bergman was
19 missed, he said a couple of things. Carlson in
20 particular was good. I'm going to read you that one
21 there because I think it was very good. This is Hugh
22 Carlson:

23 "The same thinking has prevented me
24 from making further investments in
25 fly-out fishing or in lodge amenities

1 because I'm simply not comfortable with
2 the security of MNR's word on how things
3 are going to be. One of the difficulties
4 in being a tourist operator is that
5 everything you touch is governed by MNR
6 and if you make them angry on one issue
7 they'll retaliate in another way. This
8 is an unfair and intimidating situation
9 to be in."

10 Fahlgren with the same kind of thing. He
11 questioned their ability to learn. He did a long spiel
12 in his submission about MNR's socio-economic
13 understanding and then he concluded it, he said that:

14 "I said this back in 1985 and I
15 believe it still to be true."

16 The other thing that I want to talk about
17 in character, and I've kind of left it toward last
18 here, I believe I have to be careful here because I
19 think this one is evidence and this one is not.

20 MADAM CHAIR: Excuse me, Mr. Axford.
21 We're slightly confused with the wording in submission
22 15, 16 and 17.

23 MR. AXFORD: I haven't dealt -- I'm
24 coming to that.

25 MR. MARTEL: That's the whole...

1 MR. AXFORD: Okay. I want to deal with
2 one more thing on 9 before I go to conclusion.

3 MADAM CHAIR: All right. Well, we're on
4 submission 15.

5 MR. AXFORD: Exemption is spelled wrong.

6 MADAM CHAIR: What does it mean when the
7 Board considers approval of a class environmental
8 exemption, do you mean assessment?

9 MR. AXFORD: Yes.

10 MADAM CHAIR: All right.

11 MR. AXFORD: We had a typo there. So
12 sorry.

13 MR. MARTEL: It doesn't say --

14 MR. AXFORD: Let me just check it here,
15 if there's a problem. No, it should be exemption.

16 And the second part -- the second
17 exemption should be -- should be a refusal to allow the
18 exemption in one particular area. It's just spelled
19 wrong. I've left questions in your mind.

20 MR. MARTEL: I'm not sure what you mean
21 when you say that the Board considers approval of a
22 class environmental exemption they should rely in part
23 on the character of the proponent.

24 If you're saying to us that when we're
25 considering this decision, we're not looking at

1 anything else other than this decision--

2 MR. AXFORD: Yes.

3 MR. MARTEL: --that we should take into
4 consideration the various witnesses that the Ministry
5 of Natural Resources has put forward to determine
6 whether their evidence outweighs the evidence of other
7 people who have been presented by various parties.

8 And the fact that in your submission you
9 don't trust MNR and, therefore, they're not credible so
10 that they're -- not that much weight should be given to
11 their material when we make our decision.

12 MR. AXFORD: You've got the right idea.
13 The point I'm trying to make here is that all of the
14 other submissions pretty well have had to do with the
15 evidence of activity and not activity and this one has
16 to do with who and what they are as a Ministry and what
17 their character is like, and as you consider the length
18 of a possible exemption or what types of things you're
19 going to do, you might want to think about that
20 character that's been out there. And that's all this
21 one says.

22 MR. MARTEL: Yes, but you're not talking
23 about a class environmental exemption then, you're
24 talking about the decision the Board is about to make.

25 MR. AXFORD: Yes. Okay.

1 Item No. 9 on the evidence, and I'm going
2 to have difficulty identifying this item again, but
3 this is the letter of June the 14th and had to do with
4 the fact that MNR set a budget for --

5 MR. BERAM: What year.

6 MR. AXFORD: 1990. Set a budget for
7 socio-economics. You're going to have to correct me if
8 I'm wrong here but I believe it's in evidence that such
9 a budget was set, Mr. Freidin.

10 MADAM CHAIR: Mr. Axford, are you
11 referring to the Ministry of Natural Resources reply
12 evidence or are you referring --

13 MR. AXFORD: It was an undertaking to do
14 a study on socio-economics.

15 MR. FREIDIN: There may have been a
16 costing figure in the first draft of the cost of the
17 terms and conditions, it might have been a \$200,000
18 item or some sort referred to.

19 MR. AXFORD: Sure. The only point I'm
20 trying to make here is that when it first came out
21 there was some number that was going to be used for
22 this purpose, to deal with socio-economics. There was
23 no timeframe attached to it. And my information is as
24 of yesterday that the timeframe has changed to two
25 years down the line after the approval.

1 So the only point I'm trying to make is
2 that if people are serious about doing socio-economics
3 it wouldn't be two years down the line after the
4 approval, and that's the issue of character and that's
5 the issue of how much attention people want to pay to
6 this particular component.

7 And so very simply we're saying that the
8 Board's response to MNR's requested exemption has to be
9 structured in such a way as to refuse to allow an
10 exemption in the area of socio-economics alone until
11 either MNR completes and implements the proper
12 socio-economic analysis study or some visible evidence
13 of MNR's behaviour or attitude towards socio-economics
14 in local communities is much more clearly available,
15 and this could be accomplished by something as simple
16 as a review in six months.

17 But we don't believe that you can allow
18 this thing to be approved in the condition it's in.
19 There has to be some link to get that work done and to
20 be done somewhere in a very narrow timeframe, not like
21 a couple of years after your approval, because we don't
22 really believe that it's going to be done properly.

23 So, in summary, we tried to bring you
24 some important issues on socio-economics. There's been
25 a lot of documentation on it and we tried to avoid

1 inconsequential issues.

2 So we've asked you to find that there's a
3 need for socio-economic considerations, we've asked you
4 to find that MNR said they did it, but we've also asked
5 you to find that MNR in fact did not do it.

6 So with this in mind, if you believe that
7 evidence, then there should be some revisions to how
8 they're going about their undertaking in some of the
9 areas that we listed here in our submissions.

10 And there's an additional obligation
11 resulting from these kinds of conclusions, that the
12 Board has before it a serious problem in this issue,
13 you're going to have to find your ways to deal with it.
14 The message the Board sends on socio-economics must be
15 adequate to motivate what appears to be a process that
16 chooses not to recognize local socio-economics, and the
17 Board must immediately order, in a special condition,
18 that MNR obtain outside expertise to develop a pilot
19 citizens group in the West Patricia area in recognition
20 of the lack of a land use plan. And this group would
21 be provided with more scope and more authority than a
22 typical citizens group in an attempt to grapple with
23 resource management through the timber management
24 process.

25 Now, where I would like to go from there,

1 I'm trying to be conscious of the time here. There are
2 15 points that I would like to make from the Board's
3 questions to the participants, and I'll maybe stop for
4 a minutes in case there's any questions on the
5 submission.

6 MADAM CHAIR: Not at this point, Mr.
7 Axford.

8 MR. AXFORD: The question of, first of
9 all, of forest or timber management. The Board posed
10 the question whether you're doing one or the other and
11 whether or not somebody can fool around with the
12 undertaking and MOE responded to it in particular in
13 their final response.

14 But our submission is that it's not a
15 gray area at all, that the Board has obligations to
16 rule on something called wise use, and I would ask you
17 if you have your MOE book here and I asked Mr. Beram if
18 he would make sure that you have one, if you turn to
19 page 12, it's easier than finding another book, just
20 happens to be in here.

21 You've asked the participants to deal
22 with the issue of jurisdiction and on page 12 what the
23 Act says, I've underlined the words wise management,
24 so.

25 "Wise management of...", about four lines

1 below,

2 "...socio-economic and cultural
3 conditions that influence the life of man
4 or a community", means to me that you
5 have to deal with optimization. Wise can't be read --
6 I mean, wise wouldn't be wise if you weren't using your
7 resources and your time and your energy and public
8 activity for more than just regulation. So it's not
9 gray, you have an obligation to deal with that issue.

10 And MOE's statement is that:

11 "The Board must first be satisfied on
12 the evidence that there's a relationship
13 between the way in which timber
14 management is carried out and the
15 environmental effect or concern of the
16 party."

17 Absolutely there is, it has a relation.

18 "Optimization of this activity has a
19 direct relation and, having established
20 that relationship, the test of whether
21 the term and condition should be adopted
22 is one of whether the proposed term and
23 condition is a reasonable manner of
24 addressing the concern."

25 Absolutely again. If you have something

1 to do with socio-economics, if it's like training, if
2 it's like guidelines, it's a reasonable way of dealing
3 with it.

4 So my point is that for wise management,
5 which you're required to do, of socio-economic and
6 cultural conditions that influence the life of man or a
7 community, you've got no choice, you have to deal with
8 optimization.

9 The second question:

10 "In what circumstances can the Board
11 make these resource tradeoff decisions
12 and, if the Board cannot, who can?"

13 MR. FREIDIN: Mr. Axford, do you happen
14 to have the question numbers or issue numbers as you go
15 through them?

16 MR. AXFORD: I was working out of MOE's
17 book on this, it's 1.1.

18 MR. FREIDIN: All right.

19 MR. AXFORD: If it's any help to you.

20 MR. FREIDIN: The first one was 1.1?

21 MR. AXFORD: The first one was 1, the
22 second one is 1.1.

23 MR. FREIDIN: All right.

24 MR. AXFORD: okay.

25 MR. FREIDIN: Give us the numbers as you

1 go through it.

2 MR. AXFORD: Right. I just like some of
3 the things they said in there so I used this book, MOE,
4 I say thank you very much.

5 "In what circumstances can the Board
6 make these resource tradeoff decisions;
7 if the Board cannot, who can?"

8 I think the Board has asked the wrong
9 question. It's not who can, it's who will. You see it
10 on page 162, your question is:

11 "Who can make the decisions?"

12 And I don't believe it's who can, it's
13 who's going to. If you don't, who's going to.

14 Secondly, that sustainability when
15 decisions are made becomes very much in question. If
16 people are running out and making decisions on various
17 resources and they're not compatible and as a result
18 the multitude of resources and the existence of them is
19 not sustainable, it's well within your mandate.

20 Thirdly, it's a fact that there's been a
21 failure of land use planning out there. I think you
22 have to deal with the fact. The fact is you're called
23 upon now, because this is the only tool we have
24 available at the moment to deal with it, you're called
25 upon to act.

1 Fourthly, there are obvious
2 socio-economic inferences if there are pressures on one
3 resource or another. It's obviously going to affect
4 somebody if there are pressures that the resource, some
5 other use of a resource may not any longer be usable.

6 Fifthly, we generally don't see the Board
7 making resource tradeoff decisions, we see the Board -
8 and I'm going to quote from Fahlgren again - the
9 process is the solution.

10 We see the Board setting a process by
11 which those decisions can and will be made effectively
12 and usefully for people that are involved. I don't
13 believe that the Board is called upon to make those
14 decisions themselves. The Board is obliged though to
15 make be sure that there's a process in place by which
16 the decisions can be usefully made.

17 And then on the issue of authority I'm
18 going to refer you to page 165 and, again, it's simpler
19 than using the blue book. At the very top of page 165:

20 "The Environmental Assessment Act
21 contains no express direction to the
22 effect that the Board is bound to apply
23 government policy."

24 And essentially the Act says that you can
25 do what you think is appropriate, not only can you do

1 what you think is appropriate you have obligations to
2 do it. I like the second point on 165:

3 "In the absence of a clear
4 statutory direction a tribunal which
5 fetters its discretion by permitting
6 itself to be bound by government policy
7 will have errored."

8 So if you're asking for authority I think
9 there's enough in the Act.

10 Point No. 3 of mine and 1.2 of MOE's on
11 page 163:

12 "Under MNR's overall planning regime
13 must optimization of non-timber resource
14 values yield ultimately to the interests
15 of management for the timber resource?"

16 I think you're making an assumption that
17 you make some kind of a decision and that you're force
18 feeding one or the other, and I can't quite agree with
19 that. The Board's job is not really to judge winners
20 or losers, the Board's job is to set in place a process
21 that will allow that discussion to occur on a local
22 basis.

23 Your job is to work on the mechanism that
24 will fairly provide the accommodation for these
25 tradeoffs. It's not, itself, to make or not make a

1 judgment here. You have to provide for a balancing act
2 for the overall good and overall sustainability of the
3 resource. And it's -- again, I'll repeat, I loved
4 Fahlgren's statement, process is the solution.

5 The next question, page 164, 2.1.

6 "To what degree of detail should the
7 Board be addressing detailed techniques
8 of timber management?"

9 Our view is, and it's going to be in
10 opposition with some others, that we differ on an
11 approach to management. We don't like a lot of detail,
12 we like to make sure that management character is
13 right, management attitudes are right and that there's
14 a fair process in place.

15 So the Board's job is to make sure the
16 process is right and to make an order that gives a
17 wake-up call on character. And we're quite happy if
18 MNR has that wake-up call that they be entitled to
19 manage thereafter with little interference. But
20 without some kind of comment on character and attitude
21 we're very, very concerned for the well-being of our
22 own communities in the north and for the resource in
23 general.

24 So we're very little concerned about the
25 detail, not a big problem, but make sure somebody's got

1 the message when they leave. If that's any help to
2 you.

3 Part (b) of that same question, page 164
4 on 2.1(b)

5 "How practical is it for the Board to
6 make decisions on matters being
7 researched or dealt with outside the
8 class EA."

9 My answer is the same on that, that if
10 you set the character right and you set the quality of
11 the stakeholders group right and you set the authority
12 of the stakeholders group right, then let them deal
13 with it. You'll have a number of reports coming in
14 over time, you'll have new scientific evidence, fine,
15 let them deal with it.

16 Page 167, and you'll notice I've skipped
17 over a couple of questions here, for example:

18 "What's the Board's authority to set
19 numeric limits on clearcut sizes?", that
20 sort of thing. It's not an area of our interest, I
21 mean, there are other people that are more expert, so
22 we will try and deal with the ones that we have
23 expertise on.

24 "What's the Board's authority
25 concerning (a), (b), (c), (d) on page

1 167?"

2 The first question is:

3 "The timber management planning

4 manual."

5 Lots.

6 "Guidelines implementation manuals?"

7 Lots, particularly because the
8 socio-economic guideline isn't there, and I give you as
9 evidence the same statements I made on the previous
10 page. There is no express direction not to, therefore,
11 you got it.

12 On (c) and (d) the view there would be
13 that you have much less authority, reason being that if
14 you set up the process that local effort will give some
15 indication of the size of a reserve or some roadless
16 wilderness area but there might be some provincial
17 guidelines that such and such percentage might be
18 appropriate, you might want to talk about percentage,
19 you wouldn't want to talk about specifics. So you've
20 asked for opinions on this one, lots on (a) and (b),
21 not so much on (c) and (d).

22 And just to carry on on for example, (d).
23 We agree with MOE's position that roadless wilderness
24 areas are decisions that may flow out of a planning
25 process, and that's on page 169. You may say something

1 about the values and you may something about the
2 relationship, but they should flow out of that local
3 activity.

4 Page 169, 2.4:

5 "What's the Board's authority to set
6 spending limits on silvicultural work or
7 require the time or number of MNR staff?"

8 It's hard to believe that the Board has
9 the ability to speak to those two issues. What you do
10 have the ability to speak to is whether silvicultural
11 work is going to produce sustainability, whether the
12 number of MNR staff that are currently existing are
13 likely to produce sustainability, whether it will
14 produce wise management. You probably have the ability
15 to say: Look, there isn't enough effort in these two
16 areas.

17 You can't set what should be some target
18 for the number of people, but you can say that it's in
19 our view this resource is not sustainable and it's not
20 managed wisely with the number of people we saw that
21 are currently involved in it, but I don't believe you
22 can set the level but you can disagree that the level
23 is adequate or that it's more than adequate, or
24 whatever you choose to, but I don't believe you can
25 actually set the level.

1 Page 170, No. 2.5. I like this one:

2 "What's the Board's authority to
3 require MNR to compensate trappers and
4 tourist operators for damage caused by
5 timber management activities?"

6 Well, I don't think that the Board has
7 the authority to require compensation, it might have,
8 let the legal people argue that one, but what they
9 could do to accomplish the same aim is they could
10 suggest that there be such a thing as a trust fund set
11 up with the money prior to it going to general revenue
12 so that claims could be made against it.

13 Now, that doesn't put the Board in a
14 position of ordering somebody be compensated so much
15 but it provides a process by which something could
16 happen. If there were such a thing as a trust fund and
17 if that fund stayed for six months in one spot while
18 somebody took a shot at it because they were badly
19 affected, I think you've got a fair process at that
20 point and the precedents are not that far off on that
21 one.

22 I give you the example of -- there are
23 two examples that I can think of, one is the Niagara
24 Parks Commission where Hydro set up a fund coming out
25 of the production of water for the use of Hydro and

1 it's used for a number of things around the area and
2 generally to mitigate the kind of activity that went on
3 because of the production of Hydro.

4 The second one is the Algonquin Forest
5 Authority where perhaps it hasn't been used for
6 compensation but at least there's a flow.

7 Secondly, the Board might want to talk
8 about the use of contracts. If use contract law what
9 you've got is a two-party contract between, say, a
10 tourist operator and a timber operator that becomes
11 enforceable for compensation. You don't want to get
12 into a situation where somebody is suing the MNR for
13 anything, if you can avoid it. This is just a
14 thankless job and it's never ending and we're just
15 going to waste a lot of money and these nice folks,
16 colleagues, rather than getting a solution for the
17 people.

18 Contract law would be a lot simpler where
19 it's one player and another and they would sue each
20 other if something goes wrong. They've agreed to
21 stipulations in the contract and you can set that up,
22 you have the authority to say we need more of those.
23 So that's a very good possibility.

24 The third thing that could be done there
25 is that, as I inferred earlier, there could be a hand

1 over of the licence to the community, Crown licence
2 could go to the community. At that point you have a
3 different entity that's a little closer to the ground
4 that there may be some hope of compensation on in the
5 community itself or if you wish to, for example, if you
6 wish to have the licence held by the stakeholders
7 committee, and it's not one that I'm going to recommend
8 but it's possible, a person could appeal to the
9 stakeholders committee for compensation.

10 But the point is that you've got to
11 get -- I don't think you can be in a position where you
12 sue MNR, and I don't think the Board can be in a
13 position where they say MNR has to pay, but generally I
14 think it's recognized that MNR has gone out on the limb
15 for a number of people and where somebody has been
16 adversely affected they've tried to supply them with
17 another camp or they've bought out a fishing licence or
18 that kind of thing. It's not unheard of that they'll
19 act in that area, and I think they have authority on
20 their own to do some of those things.

21 Page 171, 2.6(C):

22 "What is the Board's authority and
23 what are the implications to the Class EA
24 of district land use guidelines?"

25 If they're not approved in the case of

1 West Patricia, we're submitting that they were not
2 approved because there was such a roar up there over
3 them and that they weren't sustainable and compatible
4 and screaming and hollering and jumping up and down got
5 them in a position where they weren't approved.

6 So what's the Board's authority. You're
7 obliged to deal with what's out there, what's out there
8 are no guidelines. You have nly tool in town that's
9 working to be able to accommodate them. That means
10 that probably in our condition, or our conclusion
11 number, I think it's 15 but I'd have to look it up,
12 that -- pardon me, in our special conclusion that there
13 is some obligation to do a pilot project where a
14 stakeholders committee or a citizens committee has some
15 special mandate beyond timber. So we believe you have
16 authority to deal with that.

17 Page 172, No. 3.1:

18 "What is the Board's authority to
19 require MNR to allocate timber resources
20 to any particular individual or group.
21 Consider in particular aboriginal
22 groups."

23 I would submit to you a slightly
24 different approach to that question, and I think you
25 remember that when this question was dealt with earlier

1 where MNR kind of vehemently opposed it and we were in
2 favour that there be some ability to have benefit flow
3 or flow designated. A community doesn't always want to
4 own the timber or to own a resource and it's quite
5 properly the property of the province as that sits at
6 the moment, but the community does want to influence
7 the benefits that flow from the existence of this
8 resource, which is different than the ownership or
9 allocation of the ownership.

10 If you were to allow what we consider to
11 be a high quality citizens group with authority you can
12 deliver the same effect as allocation of timber
13 resource, you don't have to allocate a timber resource
14 to assure a delivery of a benefit. And I think what
15 the community really wants is delivery of a benefit.

16 And, secondly, I think the community
17 recognizes that there is and this isn't a sphere of
18 influence around it to which it should be able to speak
19 and as it sits today municipalities have a sphere
20 that's kind of limited by the geography lying around
21 lost houses and yet the community is very active out
22 beyond those houses, out beyond the limits of its town
23 line, and the problem is that it's night and day
24 difference what they can control within the limit to
25 what they control outside of the limit.

1 And your decision, I would hope, allows
2 some recognition of a more enlightened view of the
3 community's involvement beyond that line. And it may
4 not be directly through the municipal council, it's
5 very likely through some citizen group, but if you have
6 that authority what you will get is a change in benefit
7 flow.

8 No. 10, it's on page 174 and MOE's No.
9 3.2:

10 "What's the Board's authority to
11 specify hiring practices within the MNR,
12 such that local northern labour is
13 preferred?"

14 And 3.3 has a similar kind of a question:

15 "What's the Board's authority to
16 specify procurement practices within the
17 MNR, such that local northern suppliers
18 contractors are preferred?"

19 We think the answer to this is quite
20 easy, it's not a legal answer and it's not a fancy
21 answer and it shouldn't be difficult, if there is local
22 sensitivity because for environmental reasons, for
23 socio-economic reasons, if there's local sensitivity
24 then what you have to say to any contractors or any
25 requests for employment or this sort of thing, you have

1 to say: Look, provide us local content, provide us how
2 you're going to best fit wise use of the resource,
3 provide us with your socio-economic consequences of
4 your tender, or in the case of employment, provide
5 us -- if you're applying for a job in it, provide us
6 with some indication of your local sensitivity.

7 And if you came from British Columbia and
8 you were asking for work north of Kirkland Lake you
9 would be hard pressed to provide local sensitive, very
10 simple. It's more likely that people that would be
11 sensitive would be people that were there.

12 So within the context of environmental
13 and within the context of being sensitive to the
14 socio-economics of the area, I think it's easy to say
15 that a person should have local sensitivity if they're
16 involved in the processes that are going on there.

17 And the same thing with tendering, if
18 you're asking for provision of local sensitivity,
19 somebody's going to say: Well, geez, you know, we're
20 going to employ these or these or these people, and
21 then you can say: Well, now we've got five tenders and
22 they're all kind of nice and they're around the same
23 price but this guy looks like he's more sensitive.

24 So all I'm saying is you don't have to do
25 it quite as legally or quite as specifically as the

1 question suggests.

2 Flipping over, page 183, recourse and
3 appeals. Cite and discuss MOE's No. 9, cite and
4 discuss the appeal mechanisms contemplated in addition
5 to bump-up.

6 "In what circumstances is the
7 mechanism a legal one, that is, to the
8 courts or to a tribunal in what
9 circumstances is the mechanism a
10 political one to the Cabinet or the
11 Legislature and explain the requirements
12 for standing before any of these bodies."

13 I've listed four different kinds of
14 appeals and I don't believe -- there's a couple of them
15 I don't believe have been discussed adequately and I
16 want to take a minute on them.

17 If there's something going on at a local
18 level, somebody, the proponent of some activity or an
19 individual can appeal to the district manager as it
20 sits today and that's never changed, but if you have
21 this citizens committee, if you have a process by which
22 that individual can appeal to the citizens committee
23 that becomes a new level of appeal that wasn't there
24 before. I think that's one that's worthy of
25 consideration.

1 The second thing you have since you've
2 created a new entity with this local citizens
3 committee, you could have the individual or the
4 stakeholders committee can appeal direct to a minister,
5 the stakeholders committee itself acts like an
6 individual if it chooses to. It could appeal direct to
7 a minister. It can jump over the region, it can do
8 whatever it sees fit, it's its own entity.

9 Thirdly, an individual or a stakeholders
10 committee could appeal to a regional technical
11 committee and here's where ourselves and the Industry
12 have some, they're not exactly on this one, but it's
13 not far off either.

14 We don't view the regional committee as
15 having any real authority locally, we view the regional
16 technical committee as having ability to deal with the
17 technical issues, so if it's a technical issue you're
18 dealing with, then the individual or the stakeholder
19 would appeal to that technical committee. The
20 individual or the stakeholder above and beyond that,
21 that individual or stakeholders committee can appeal
22 politically to a harvester if it's a harvesting type
23 question.

24 And if, for example -- let's take, for
25 example, Boise Cascade, since we were using them

1 earlier. Let's say they were going to do something in
2 Hugh Carlson's area and Hugh couldn't get along with
3 them, the stakeholders committee could go to a slightly
4 different level than Hugh would go, Hugh would appeal
5 to Boise, the stakeholders committee appealing to Boise
6 might carry more weight and they'd: Look, you've got to
7 give us some help on this, we're going to maybe give
8 you some help on another one because you have to deal
9 with many local issues up here. We think that that
10 stakeholders committee could be active, it could
11 advocate, if I use the word from Dave McLeod, a
12 stakeholders committee can advocate more than just sit
13 there and rotate, they can advocate.

14 So you've asked about recourse and
15 appeals. Those are appeals we haven't talked about in
16 any of our submissions. What we did say in appeals on
17 bump-up is that all we would ask from MNR is that they
18 not oppose the possibility of a bump-up. That gives a
19 fairly good chance that a bump-up would be successful.
20 I mean, it doesn't guarantee it, but it gives it a
21 chance.

22 So we want to be reasonable to them and
23 we want to force that decision locally, do everything
24 humanly possible to force a decision locally and we'd
25 be just as happy if they really wanted to get a bump-up

1 that the stakeholders committee virtually had to resign
2 to get it. That's the kind of pressure we want on
3 accountability locally. That's what Everly said about
4 accountability. We believe that's exactly correct,
5 that you have to have that accountability locally and
6 you have to have enough power and authority locally
7 that things are going happen, otherwise people are just
8 going to duck the thing.

9 I'm going to back up to page 182. There
10 was a question of whether or not the amended timber
11 management plan actually reflects the Board's terms and
12 conditions of approval.

13 The question here, the Board is grappling
14 with whether or not this plan has got everything they
15 want in it and I think, if I understand it, that the
16 plan isn't quite finished in some ways and there's
17 other pieces that could come to it.

18 What about our issue of socio-economic
19 guidelines. How are you going to deal with that if
20 they're not written until after you make your ruling,
21 and that's really unfair to our party. The only way we
22 see dealing with that is you've got to withhold a piece
23 of your ruling until that job is done. You can approve
24 everything but one component, say we'd be glad to
25 approve that component later on but get your job done.

1 Compliance, page 184, MOE's No. 10.

2 "How can the public be assured that
3 MNR will follow the rules contemplated by
4 any terms and conditions of a possible
5 approval?"

6 And again we're going to try and answer
7 you, not in the legal way that others may answer you.
8 The Board, the Assessment Board is a quasi-judicial
9 process and I think you better use the political side
10 of your quasi-judicial. You have to make some
11 political statement about what you found.

12 You sat here and listened for years, you
13 heard more evidence and you're more skilled now than
14 anybody else on this issue because you listened very
15 carefully to all parties. You've got some obligation
16 to get out and communicate on this thing and if you do
17 that, and if you communicate and educate what you have
18 is an enforcement from the public at that point, you're
19 gone and forgotten, but the education is out there and
20 it causes the public to assure that MNR will follow the
21 rules contemplated by your terms and conditions.

22 I think you have to look very, very hard
23 at that issue because a number of the things called for
24 MNR to -- MNR is still in this moving pattern in some
25 ways and yet your jurisdiction is finished, so what you

1 have to do is communicate in such a way that the public
2 becomes the enforcer.

3 Page 185, MOE's No. 11, the issue of
4 moving targets. I'm going to reply to that the same
5 way I did on the issue of compliance. It's tough
6 enough to judge what MNR did in the past, it's tougher
7 still to judge what they're doing today, it's really
8 hard to judge what they're going to do especially if
9 you're not around. In a judicial situation you would
10 talk about some crime somebody committed in the past
11 and maybe get a report on their current behaviour so
12 that you can make some evaluation of how they should be
13 sentenced. But you normally don't take into account
14 what he says he's thinking about doing. You might take
15 it into account, but pretty lightly.

16 So the issue of moving target here, I
17 think you're going to have to find some way to
18 communicate in the future or -- to communicate in the
19 future and to judge in the future. Well, you can't do
20 that because the Board doesn't exist. So the only
21 thing you can do is put terms and conditions that will
22 outlive you and say you're going to have to comply with
23 some of these things and the public will be the judge
24 of you. I don't know how you're going to -- MOE could
25 enforce it, but they've got to go back into your brains

1 to unthink what you were thinking. It's a tough
2 problem.

3 So my suggestion is deal with what you
4 can now, try and get the character right and the public
5 will enforce it for you.

6 And that is about the end. So if I've
7 done everything right, and I skipped over a number of
8 things, particularly the issue of authority, I was
9 hoping that you might ask me some questions. Maybe not
10 and you can go to lunch early.

11 MR. MARTEL: Well, I have a question. I
12 look at your submission 14 - make sure it's the right
13 one - yes, 14. It seems to me what you're attempting
14 to do, and correct me if I'm wrong, but in reality by
15 an election of a local citizens committee with economic
16 powers greater than the district manager in some
17 instances you've in fact created another level of
18 government.

19 I think you said that if the beggars
20 didn't do what they were supposed to do you would turf
21 them out at the next election. You would give a whole
22 series of powers to that committee greater than the
23 district manager, I don't know how they're going to
24 relate that to what's going on in other units because
25 yours is only one of many, and how that meets the

1 provincial targets, but it seems to me that that is a
2 whole -- in fact, you've created a new level of
3 government there.

4 MR. AXFORD: I think you're correct but
5 it's only applicable in a very narrow range. I want to
6 be very careful here.

7 First of all, it's only applicable on
8 socio-economic kinds of decisions; secondly, it's only
9 applicable for -- where this greater thing comes in,
10 it's only applicable where the West Patricia land use
11 plan is located; and, thirdly, it's only applicable
12 until the point at which somebody does something about
13 socio-economic guidelines. Pretty narrow.

14 MR. MARTEL: How do you restrict it to
15 your own area though? I mean, if you establish that
16 local citizens committees are elected and they have
17 socio-economic making decisions, the power to make
18 them, why wouldn't that apply in other areas as well?
19 I mean, we can't start, I don't think as a Board, to
20 pick and choose which Ts&Cs apply to any given area.

21 MR. AXFORD: Why not? We're suggesting
22 that only a pilot one for that particular area, for
23 that particular level of authority. For other areas
24 there would be severely diminished levels of authority
25 because it's not required.

1 MR. MARTEL: But it doesn't say that in
2 there. You say that in another term and condition with
3 respect to needing land use guidelines, but it's not in
4 that term and condition, Mr. Axford.

5 MR. AXFORD: Which one?

6 MR. MARTEL: Just a minute. Yes, you
7 make reference to the lack of land use plans for the
8 West Patricia area in No. 10, but if you look at No. 14
9 that doesn't refer, or it doesn't link the two
10 together, and 14 on its own, as I say, it's a different
11 level of government for socio-economic reasons which I
12 say looks a lot like another level of government.

13 And then you further say - because I
14 questioned you - that it's only for the one region and
15 shouldn't be applied anywhere else. Now, are you
16 saying 10 and 14 go together?

17 MR. AXFORD: If you're saying that I'm
18 inconsistent, you're probably right. I've done each
19 one of these separately to try and make a point.

20 As a group we're looking for a bit more
21 local authority, I think that's fair. We're looking
22 for more than a bit more in the area of the West
23 Patricia land use plan is located.

24 But if you're concerned about this other
25 level of government, I mean, you have virtual agreement

1 on the Illing Report that there should be such a thing
2 as a citizens committee. You may choose not to accept
3 it still, but all I've done is I gave it some very
4 special authority and the group at the Illing Report
5 could not deal with procedural issues or issues of
6 authority.

7 MR. MARTEL: But I think the local
8 citizens committee, as I understand the presentations
9 made to us, is advisory in all aspects, I guess, except
10 the one individual who would sit on the planning team
11 and he would have or she would have some input there at
12 the planning level, but I don't know of anyone who has
13 recommended giving them authority.

14 MR. AXFORD: Well, with respect, Mr.
15 Martel, I think you should review the evidence,
16 particularly of Mr. Everly and Mr. Fahlgren, Mr.
17 McLeod, Mr. Carlson, Mr. Sayeau on the issue of
18 authority. It's all in here and they've all
19 recommended authority.

20 MR. MARTEL: No, no, I'm not suggesting
21 we're at loggerheads, Mr. Axford. I'm not talking
22 about the group you're with, I'm talking about the
23 terms and conditions as presented to us so far. In the
24 Illing agreement the parties are recommending that the
25 local citizens committee has an advisory role from the

1 time the new plan starts, right from square one.

2 And I understand what you're group is
3 after, I'm just saying there's...

4 MR. AXFORD: Okay. I brought up the
5 Illing Report also because what I said is that there
6 hasn't been -- I don't think there's been enough
7 discussion of that issue.

8 We seem to be the only one that want to
9 get -- either want to get it on the table or are able
10 to or whatever. We can't get into that and it's been
11 left of no consensus reached.

12 I think it's appropriate that there be
13 some mechanism to have some further discussion about
14 what that level of authority should be, what the
15 procedures are. I mean, that's crucial to how you
16 deliver some of this stuff.

17 I would be real thrilled if the Board
18 would order some negotiation on that issue. I don't
19 know what you do. But the best I can do is put forward
20 our proposals because I haven't found another forum in
21 which to discuss them. And I can tell you, we spent a
22 lot of days in that negotiation process, we spent more
23 days in negotiation than we did in the hearing.

24 MADAM CHAIR: Just one question, Mr.
25 Axford. Is it your understanding that part of or any

1 of the West Patricia district is within the area of the
2 undertaking? All of it is in it?

3 MR. AXFORD: I think all of it. There
4 might be a little bit in the north that isn't. I would
5 have to go look at the map, but all of it -- maybe
6 someone else will want to answer that.

7 MADAM CHAIR: Okay. I don't have any
8 more questions for you, Mr. Axford.

9 MR. AXFORD: See I've delivered, it's
10 noon hour.

11 MADAM CHAIR: Thank you very much.

12 MR. AXFORD: I hope you take that into
13 account when you think how carefully we've done our
14 argument. We also looked after your time.

15 MADAM CHAIR: Thank you very much.

16 ---Luncheon recess at 11:55 a.m.

17 ---On resuming at 1:30 p.m.

18 MADAM CHAIR: Good afternoon, Ms. Lloyd.

19 MS. LLOYD: Good afternoon.

20 MADAM CHAIR: Thank you for coming to
21 Sudbury and giving us the final argument of Northwatch,
22 and we are ready to begin whenever you are.

23 MS. LLOYD: Thank you, and I would like
24 to say it is a pleasure to come to Sudbury from North
25 Bay. We appreciate when the hearings are held in our

1 region and we certainly appreciated having the
2 opportunity to present our own evidence in North Bay
3 and making the shorter trip to Sudbury to present final
4 argument.

5 ARGUMENT BY MS. LLOYD:

6 I am going to be fairly brief. I have
7 given you in print our final submission and I apologize
8 for only providing it today. I understand that the
9 Board would have preferred to have it in advance, and I
10 can only say that we did our best and that getting here
11 today was as best as we could do. So my apologies for
12 not getting it to you sooner and thank you for bearing
13 with us in our delays.

14 I want to just walk through what we have
15 given you in our written submission and highlight a few
16 points and perhaps provide some additional comment that
17 might convey a better understanding of our intent or
18 what motivated us to make those comments.

19 I want to start, though, with the
20 introductory quotation that was used from Dr. David
21 Balsille which we thought provided very good direction
22 to the Board and to all of the participants in the
23 hearing in terms of what the principles are we should
24 be considering, we should have been considering
25 throughout the hearing and the principles which you

1 should perhaps use as your guiding principles as you
2 write your decision; that is that:

3 "Under ecosystem integrity, ecological
4 principles and approaches should be
5 incorporated into the planning process to
6 provide biodiversity, conservation,
7 and sustainable, social and economic
8 benefits."

9 I think those words speak for themselves
10 and I agree with Dr. Balsille that those words do very
11 much speak for themselves.

12 Our final submissions are divided into a
13 number of sections which co-relate to the way we
14 presented our evidence. We began with an introduction
15 and some discussion of the undertaking itself and then
16 moved into the four areas of our evidence: public
17 decision, impacts of access, wilderness values, land
18 uses and allocation of rights and then some summary
19 comments to that and then the order requested.

20 The introduction is provided to remind us
21 all of the length, duration and volume of this hearing
22 and I am sure that you don't need any reminding of
23 that, but it was a good point of reflection for us that
24 we have been five years in this process, almost to the
25 month, and the volume of evidence that has come before

1 the hearing panel I expect is going to make your task a
2 humongous one when you come to write your decision, but
3 it certainly made our task of writing final submissions
4 a huge one as well.

5 There are 67,000 pages of testimony, 105
6 witnesses from the Proponent and I don't know how many days
7 and days and days of hearing to review and we have done
8 our best to provide a review and final submission in
9 reflection that reflects on that, but I have to say
10 that the task was one that was larger than our
11 resources.

12 Northwatch, as you know, joined in a
13 partnership with the North Shore Tribal Council, United
14 Chiefs in Council of Manitoulin and the Union of
15 Ontario Indians. Partway through the hearing we
16 expanded our initial partnership which had been a
17 coalition which included the Serpent River First Nation
18 to include those other aboriginal organizations which
19 made our evidence somewhat broader, our areas of
20 concern somewhat broader and we tried to do justice to
21 that broadness in our final submissions. We hope that
22 you will find our comments of some use to you.

23 We want to begin by making some comment
24 on what we understand to be the debate that seemed to
25 have been perhaps raging in the hearing of late and

1 that is the debate about what is the undertaking.
2 This seems to be a debate that plagues a number of
3 hearings.

4 Our understanding of the debate is that
5 MNR is proposing that after five years of hearing the
6 evidence that has been put before this panel has only
7 been perhaps background evidence to a decision which is
8 contained to the areas of timber management activities:
9 harvest, access, and renewal primarily.

10 We don't accept that argument. I think
11 that Forests for Tomorrow has provided you considerable
12 comment on this and we are very much sympathetic to the
13 argument that Forests for Tomorrow has put forward.
14 We think that it's doing an injustice to the efforts
15 that have been made at this hearing and an injustice to
16 the decision that you have to make, to limit the scope
17 or limit the undertaking to those four activities, to
18 those timber management activities.

19 We think that there are two imperatives
20 that direct you to a broader decision and one is the
21 Environmental Assessment Act itself. The Environmental
22 Assessment Act requires that projects be assessed in a
23 context which includes the environment, social, natural
24 and economic and we think the Environmental Assessment
25 Act directs that decisions be made in a wholistic

1 sense, that makes the context of the project and its
2 effect inseparable from the activities of the project.

3 We think, therefore, that you have the
4 authority to direct the Proponent on a wide range of
5 issues that directly relate to timber management and
6 its member activities, such as the retention of
7 roadless areas in the landscape, the identification of
8 old growth ecosystems and their retention in the
9 landscape and the allocation of timber resources to
10 "special groups", such as aboriginal groups.

11 At last it could be argued that there is
12 a double authority. Here comes the second imperative.
13 It is granted not only on wholistic assessment required
14 under the act, but also given the special relationship
15 between the Crown and First Nations which directs all
16 other activities of the Crown, including timber
17 management planning, which takes place within that
18 broader context.

19 The alternative to accepting the Board's
20 authority in these matters would be for the Proponent
21 to demonstrate that the undertaking would not eliminate
22 opportunities for these decisions to be made elsewhere,
23 as the Proponent's opinion to us suggests that it
24 should be the case.

25 The Proponent has not demonstrated this,

1 have not demonstrated that these activities would not
2 foreclose on options or opportunities to make those
3 same decisions in other forums, other venues.

4 Northwatch submits that they could not do
5 this given the interlock between the decisions. It is
6 the interlock which establishes the Board's
7 jurisdiction to require certain actions on the part of
8 the Proponent because of the Proponent's intention to
9 proceed with timber management planning and because of
10 its subsequent activities.

11 I want to move on to a discussion of the
12 four areas of evidence which Northwatch intervention
13 had brought before you in our presentations.

14 The first was discussion of public
15 decision making. In our evidence we identified a
16 number of principles which we argued should direct the
17 Proponent in its facilitating the public's role in land
18 use planning and decision making as it will take place
19 with respect to timber management.

20 The principles direct the Proponent to
21 undertake initial strategic planning with First
22 Nations, provide early notification and involvement,
23 establish broad goals and objectives in a consultative
24 process, ensure accessibility and inclusion for those
25 with an interest, provide accessible and comprehensive

1 information bases, undertake individualized approaches
2 to each forest area, establish conflict resolution
3 mechanisms in each planning process and establish a
4 regular annual plan review.

5 We think those are the guiding principles
6 for a public decision-making process and we have
7 provided references to each of those principles in our
8 written submission.

9 We called a number of witnesses in the
10 area of decision making and they provided both
11 experiential evidence of public consultation processes
12 in the context of timber management planning and a
13 critical overview of the Minister of Natural Resources'
14 public consultation process as it was proposed in the
15 Proponent's 6th of January 1992 draft terms and
16 conditions.

17 While we accepted that the Proponent's
18 proposed model of public consultation included a number
19 of commendable elements, with certainly an improvement
20 on what had been practised in most areas of this
21 decision making to present and certainly historically,
22 it excluded a key one and that was the ability for the
23 public to participate in the setting of broad goals and
24 objectives.

25 By setting of broad goals and objectives

1 we mean a decision-making process which allows the
2 broadest questions to be asked. With respect to the
3 area of planning - what is our objective, what is our
4 priority and what do we most value.

5 Those are the fundamental questions and
6 they should be asked at the beginning of each timber
7 management planning process and each process wherein
8 the public is being allowed the opportunity which is,
9 we would assert, the public's right, but provide the
10 opportunity to participate in the public consultation
11 processes.

12 The MNR's proposed process limits the
13 opportunity for participation to review the review of
14 proposals and draft plans and does not provide for
15 participation in setting goals and objectives.

16 We provided evidence of this in our
17 witness statement No. 19. Peter Homenuck and Mark
18 Dockstater were our witnesses to that.

19 Lack of public involvement at the very
20 outset of the planning process when the overall goals
21 and objectives are established limits the extent of
22 effective public participation in the process. The
23 term effective being defined as the ability, capacity
24 and extent to which the public and/or stakeholders may
25 change, alter or otherwise modify the MNR planning

1 process objectives once that process has been put into
2 operation.

3 The inclusion of the LCC in the planning
4 process prior to the first phase of plan development is
5 an improvement from the current situation but still
6 falls short of achieving what it must and, that is, the
7 inclusion of the public in the first stages of setting
8 goals and objectives; i.e., answering the what will be
9 the acceptable or best land use rather just the where
10 or the how will the timber be harvested.

11 More importantly the public must be
12 involved before any assuming is made that the
13 allocation and harvesting of timber outweighs other
14 considerations or competing interest in the
15 decision-making process.

16 Northwatch submits that the Proponent
17 should be directed by the terms and conditions of
18 approval to their application to develop and implement
19 an exercise wherein the public is afforded an
20 opportunity to participate in the setting of goals and
21 objectives for the plan for the forest management unit
22 before scheduling timber management or harvest,
23 certainly harvest.

24 The second area in the public
25 decision-making model that's been proposed that we

1 would like to discuss is the appointment to the local
2 citizens committee. While in a general manner the
3 model for public involvement as described in Panel 16
4 of the Ministry of Natural Resources' reply evidence
5 and in their revised terms and conditions, and it is an
6 improved one, and North watch would like to say that we
7 support the inclusion of a member of the local citizens
8 committee on the timber management planning team and
9 the opening of the plan team meetings to other members
10 of the local citizens committee and the join meeting of
11 local citizens committee and planning teams, we still
12 think that there are a number of deficiencies
13 persisting through the Proponent's reply evidence,
14 final submissions and their final terms and conditions.

15 As we detailed in our evidence there are
16 a number of problems that result from inappropriate
17 methods of establishing stakeholders committee,
18 problems which could range from conflicts of interest
19 to lost opportunities to gain the best advice in the
20 planning process, to members of the public having the
21 sense of being refused access to the decision-making
22 process.

23 We submit that the Proponent should be
24 required by the terms and conditions to establish a
25 clearly understood and identifiable method or mechanism

1 for establishing membership on the local citizens
2 committee, one which is less discretionary than
3 described in their final submissions.

4 In their final submission they state that
5 when the first LCC is convened for any particular
6 forest management unit it is anticipated that the
7 district manager would likely approach groups with a
8 known interest and ask them to appoint a member of the
9 local citizens committee. In addition, the LCC itself
10 may take the initiative to add people they think may be
11 appropriate.

12 We want to be clear that we think this is
13 an improvement, that the Proponent is moving in the
14 right direction but they need to move a little further.
15 They need to establish that methodology or mechanism
16 whereby the appointment process is more democratic,
17 more open and, therefore, more likely to provide the
18 best advice.

19 We suggest that the methodology should
20 include a broad public request for nominations, notice
21 to the groups of the public with a known interest, to
22 all groups with a known interest, application of
23 criteria which includes interest, representation,
24 history of concern and familiarity with the locale and
25 there should also be a review mechanism so that if we

1 have a situation where the local citizens committee is
2 established and there's some degree of dissatisfaction
3 within the public sector feeling that they don't have
4 representation or adequate access to the
5 decision-making process through the local citizens
6 committee, there should be some review or appeal
7 mechanism established as part of that methodology.

8 The next area we would like to discuss in
9 the decision-making process is the timber management
10 native consultation program. In a review of the
11 Proponent's evidence, in their reply evidence and final
12 submissions it's suggested to us that the Proponent has
13 identified an additional consultation program for
14 native communities but that, unfortunately, is in lieu
15 of recognition of the role of First Nations and the
16 shared decision-making with the Crown and its agents.

17 In reply evidence Dr. David Balsillie, a
18 witness for the Proponent and the Assistant Deputy
19 Minister to the Minister of Natural Resources,
20 described the relationship which exists between Ontario
21 and aboriginal people and he said: If we can move to
22 the statement of political relationship which was
23 signed on August the 6th of 1991 which recognizes the
24 First Nations of this province as distinct nations with
25 other governments, cultures, languages, traditions,

1 customs and territories; it recognizes the First
2 Nations constitutional and treaty rights and their
3 inherent right to self-government.

4 It was signed by the Premier and the
5 Minister responsible for Native Affairs, Mr. Wildman,
6 who also happens to be the Minister of Natural
7 Resources. It was also signed by 14 native chiefs.

8 Subsequent to that signing it has been
9 recognized that access to lands and resources is a
10 necessity in order to achieve self-government because
11 without an economic base and without a land base they
12 will not achieve economic self-sufficiency. Therefore,
13 all discussions and negotiations with First Nations are
14 now carried out on a government-to-government basis and
15 that the essence of the statement of political
16 relationship.

17 We submit that that
18 government-to-government relationship which Dr.
19 Balsillie had clarified is the basis for all
20 discussions and negotiations with First Nations. That
21 government-to-government relationship should be what
22 directs the role of aboriginal people in the timber
23 management planning process. We submit that that is
24 not the case with the Proponent's model as proposed in
25 their terms and conditions.

1 In our own evidence the effect of
2 government-to-government relationship on MNR's approach
3 to timber management planning was described and that
4 was described in the evidence brought by Dr. Homenuk
5 and Mark Dockstater and they clarified that it must now
6 be recognized that the role and authority of First
7 Nations in this instance will take precedence over
8 other stakeholders, and they cited a number of reasons
9 for that.

10 They did an analysis of aboriginal rights
11 in the last decade and concluded that the priority
12 nature attributed to aboriginal rights in the context
13 of the contemporary exercise of those rights directs
14 the kind of relationship and the kind of engagement
15 that we are proposing aboriginal people have in the
16 decision-making and timber management planning process.

17 They closed at one point by saying:

18 "As to the specific implications of
19 resource planning, therefore, both the
20 legal and political nature of aboriginal
21 rights combined to suggest that
22 although innovative the MNR model
23 proposal to elicit aboriginal
24 participation is wholly insufficient.

25 Consequently, in a consideration of the

1 current dynamic and fast-paced
2 development of both aboriginal rights and
3 self-government concepts, the proposed
4 model addition is the only forum by which
5 First Nations could achieve the level
6 of planning process involvement
7 commensurate with their legal and
8 political status in Ontario."

9 We submit that while the timber
10 management native consultation program reflects the
11 current trend in relation to matters of aboriginal
12 specific concern in that it exhibits a level of
13 flexibility to address certain requirements of the
14 aboriginal community, it does not adequately reflect
15 the responsibility of the Proponent to engage
16 aboriginal people in shared decision-making, and that
17 as a condition of the approval the Proponent must
18 provide in their procedures for plan development a
19 protocol which adequately recognizes the statement of
20 political relationship and the responsibilities of the
21 Crown and its agent which flow from that statement.

22 The Proponent raised in their final
23 submission a question we found somewhat troubling, how
24 would MNR deal with any public concerns over treaty
25 native interests separately or differently from other

1 interests. And they offer evidence of a possible
2 response which was to say that:

3 "I hope that we will be able to
4 demonstrate to people what we are doing
5 is providing a special consultation
6 opportunity to recognize the needs of a
7 group of individuals that have particular
8 interests on how we are going to conduct
9 timber management operations in and
10 around or adjacent to the values that
11 they hold a particular interest in."

12 While it's perhaps the responsibility of
13 this panel, while it's perhaps not the responsibility
14 of this panel to instruct the Proponent in such matters
15 of what we would suggest are common sense, Northwatch
16 would hope that the panel would provide the Proponent
17 with some general directions in answering questions
18 which might reflect such public concerns.

19 Those directions might be to explain the
20 statement of political relationship, respond based on
21 the facts as they exist within law with respect to
22 aboriginal and treaty rights and to not confuse the
23 rights of nations with the "needs of a group of
24 individuals".

25 Going on to a discussion of the dispute

1 resolution, we have two areas that we want to address
2 in that and one is the bumping up of contingency plans
3 and the second is outstanding bump-up requests.

4 With respect to the bumping up of
5 contingency plans, I understand the Proponent to be
6 suggesting that contingency plans should not be subject
7 to the bump-up mechanism and that they argue, in fact,
8 that because of the nature of contingency plans they
9 should not be subject to that bump-up and that,
10 instead, they would provide public consultation
11 requirements to be designed on the basis of that
12 specific set of circumstances.

13 And they say that the intention would be
14 that the planned operations would be directed to the
15 least contentious areas possible in order to allow for
16 speedy planning and approvals in emergency situations.

17 As a practical matter, they say, if there
18 were to be bump-up provisions for contingency areas
19 with the required lead time periods included the
20 initiation of a bump-up request would probably result
21 in the abandonment of that contingency plan.

22 We would like to respond fairly directly
23 to that comment and say that as a practical matter if
24 there is no review or appeal mechanism; i.e., a bump-up
25 mechanism or the provision of a bump-up mechanism even

1 as a back-up, then we might as well abandon contingency
2 planning, not just the plan but contingency planning
3 and perhaps we might as well abandon all planning
4 because any time an emergency can be named and to erase
5 the public's right to participate and to negate the
6 legitimate standing which is given to non-timber values
7 then we, in fact, don't have a planning process.

8 So we would like to be very clear that we
9 absolutely reject the Proponent's submissions that
10 contingency plans should not be subjected to the
11 bump-up mechanism.

12 They state that the intention of the
13 planned operations would be directed to the least
14 contentious areas possible, but we say that the popular
15 saying, we'd like to quote the popular saying which is
16 that the road to hell is paved with good intentions
17 and, frankly, we don't really care what the intention
18 might be, what we care is the result and the certainty
19 for the public in being able to participate in the
20 timber management planning process and decision-making.

21 I would like to see that the very need
22 for a contingency plan suggests that the planning
23 process has either failed or has met with unforeseen
24 circumstances making that provision of the bump-up
25 mechanism very essential, and we'd also like to say

1 that by providing a bump-up mechanism doesn't assume
2 that every and all contingency planning will be bumped
3 up, only the possible public interest in having it
4 bumped up would be provided for.

5 We submit that the contingency plans must
6 be subject to the same bump-up provisions as timber
7 management plans and major amendments. And we would
8 satisfied with the Board's acceptance of Forests for
9 Tomorrow's condition 92 in Appendix 15 with respect to
10 that.

11 The last item in this area is the
12 outstanding bump-up request and the discussion of that.
13 We submit that it's reasonable to prevent operations
14 whose approval is still being sought to go forward but
15 we accept the Proponent's rationale that the areas of
16 dispute may be less than the entire area for management
17 plans and we would, therefore, be satisfied with your
18 acceptance of Forests for Tomorrow's condition 92 in
19 Appendix 15 as they filed it on October 6.

20 Sorry, we have one more area we did want
21 to discuss in the decision-making area and that's with
22 respect to implementation manuals, and we support that
23 MNR is proposing to revise existing implementation
24 manuals and that as new manuals be developed and as
25 those revisions take place that there would be

1 opportunities for public review and public
2 participation in the development and finalization of
3 those manuals.

4 But we don't accept that the Proponent
5 has adequately identified the range of need for that
6 participation and, in fact, we say that they've been
7 most unsatisfactory and that they've not made clear
8 their intent to include First Nations in this review
9 process.

10 And given that the MNR proposals for the
11 makeup of local citizens committee recognize native
12 communities as only one of a number of stakeholders
13 must be clarified elsewhere, perhaps that the Proponent
14 recognizes the government-to-government relationship
15 between First Nations in Ontario, the responsibilities
16 that flow from that, and that they intend to act on
17 those responsibilities with respect to the review of
18 the implementation manual by clearly identifying a role
19 for First Nations in that review.

20 The next area of discussion is impacts of
21 access. We also brought some evidence in this which
22 made a number of recommendations or suggested a number
23 of recommendations to eliminate opportunities for
24 unplanned access, to implement a system for staff gates
25 on all major access roads, to prevent illegal offshoots

1 of access roads, to control non-intended use of access
2 roads, to impose strict control over the use of forest
3 access roads after logging, to publicize and impose
4 penalties for access infractions and violations.

5 We called a number of witnesses in the
6 area of planning and in a discussion of impacts of
7 access and they discussed those issues from the
8 perspective of planning and recreational and
9 wilderness concerns. We have a few areas we would like
10 to address specifically, and the first being roadless
11 areas.

12 Forests for Tomorrow has proposed that
13 the MNR adapt a roadless areas policy and they base
14 this on the ecological and public need to keep certain
15 areas in a roadless state. And in recognition of the
16 absence of such a policy on the part of the Proponent
17 at present and the failure of the Proponent to conduct
18 a systematic review of the remaining roadless areas to
19 determine if such areas could be or should be left in a
20 roadless state, we support the Forests for Tomorrow
21 proposal.

22 We called evidence on the impacts of
23 access which demonstrated deleterious effects of
24 increasing and uncontrolled access and identified the
25 need for MNR to take action to limit access and to

1 restrict road use and road extensions.

2 Quite simply, we feel it boils down to
3 this: More roads equal more access which equals more
4 impact on the land.

5 Should all the province be diced up and
6 treated likewise? We suggest not. One of our
7 witnesses very clearly stated that that should not be
8 the case, and in Mr. Muir's presentation I think that
9 was the main message that he brought to you.

10 Northwatch witnesses also testified about
11 the interlocking impacts of timber management access
12 and timber harvest and their cumulative effects on the
13 areas ecological well being and on the back country
14 experience.

15 There was particularly some discussions
16 about the effects of access in the Temagami area around
17 Lake Temagami and the Lady Evelyn Wilderness Park which
18 I provided references to.

19 We note that the Ontario Forestry
20 Industry Association does not support the roadless area
21 concept, but has put to the Board its arguments against
22 the proposal, a number of which they cite the MNR as
23 their source, concluding the source where they say:

24 "FFT proposals for ecological reserves
25 and roadless areas also appear to require

1 additional data collection with respect
2 to such areas for every management unit
3 in the area of the undertaking as
4 observed by MNR witnesses.

5 "The new FFT proposals on ecological
6 areas..." they continue,
7 "...from roadless areas would appear to
8 require some type of additional data
9 collection with respect to every
10 management unit, but would also require
11 planning for those areas in the context
12 of road use for numerous other purposes
13 such as mining and recreation, et
14 cetera."

15 We have a couple of points to make with
16 respect to that. As demonstrated by the MNR map of
17 access roads in Ontario, which I believe was filed as
18 an exhibit with the Board and was further described by
19 a witness appearing in the North Bay community
20 hearing - actually she is here as well - the
21 identification of currently roadless areas would not
22 prove to be too daunting a task.

23 While the OFIA asserts that the FFT
24 proposal would "appear to require" further data
25 collection, it is our submission that the data

1 collection and the preliminary stages will be no more
2 labour intensive than reading a map with a crayon in
3 hand, and that further data collection would be less
4 onerous than that which would be required to meet the
5 proposals to construct new roads or to extend existing
6 ones. There needs to be data collected either way you
7 go.

8 Northwatch does not presume the OFIA to
9 be arguing by their statement that the FFT proposal
10 would also require planning in the context of road use
11 for numerous other purposes, such as mining and
12 recreation, et cetera, we don't presume that the OFIA
13 is arguing that the Proponent be in the business of
14 building roads to serve those other purposes. We would
15 certainly hope that that is not their proposal. The
16 Proponent has argued to the panel that roadless areas
17 are not within the planning realm of the undertaking
18 for which they seek approval.

19 Northwatch submits that this assertion
20 must meet a test. Will the decision which the
21 Proponent accepts within the undertaking eliminate the
22 opportunity for other required decisions; i.e., with
23 respect to roadless areas, to be made in other forums.

24 We feel the answer is plainly yes.
25 Timber management plans eliminate opportunities to

1 establish roadless areas by the functions under the
2 timber management planning process, including the
3 extention and expansion of roads and road networks.

4 So the option to establish roadless areas
5 is foreclosed upon within the timber management
6 planning process so, therefore, must be within the
7 capacity of the timber management planning process.

8 We support the submissions made by
9 Forests for Tomorrow with respect to roadless areas and
10 we support the jurisdiction of this Board to require
11 the MNR to establish roadless areas within each forest
12 management unit.

13 Northwatch asks that the Board recognize
14 them as a signatory to the terms and conditions of
15 Forests for Tomorrow which support that party's
16 submission on roadless areas.

17 Two other items in the discussion of
18 access. One is on road abandonment. We accept MNR's
19 proposal that the question of road abandonment be
20 addressed as a component of the use management strategy
21 for each particular road and that the strategy be
22 documented for each primary and secondary road within
23 the management unit. We do not, however, accept the
24 specifics of the approach outlined in the Proponent's
25 terms and conditions.

1 Given the considerable impact of access,
2 including and particularly uncontrolled access, we
3 submit that the considerations of abandonment
4 provisions must be a standard component of the use
5 management strategy which the terms and conditions do
6 not reflect, and that there must be a written rationale
7 for a submission provided in any instance where
8 abandonment provisions are not included in the use
9 management strategy.

10 With respect to road planning, we would
11 like to simply say that we support the submissions of
12 Forests for Tomorrow with respect to FFT's proposed
13 access planning process and ask that the Board
14 recognize us also as a signatory to those conditions,
15 that's conditions 38 to 43 of Forests for Tomorrow's
16 final terms and conditions.

17 In the discussion of wilderness values we
18 called evidence on areas of concern generally
19 categorized as wilderness areas which included the
20 protection of wild areas, old growth forest
21 conservation, social and cultural values related to
22 wild forests.

23 Our witnesses' conclusions have been
24 summarized in a number of recommendations including
25 ones which direct the Proponent to contain wilderness

1 areas to act as natural laboratories, to retain old
2 growth forests in particular to act as natural
3 laboratories, these are to be retained within the
4 landscape, to emphasize species diversity and stability
5 as measures of wilderness health, to identify the gaps
6 in forest community site type representation, to meet a
7 10 to 15 per cent minimum protection target in each
8 OMNR site district and to determine regional status of
9 each forest type to develop provincial and site
10 district protection priorities and provincial
11 protection guidelines. We provided some evidence with
12 respect to those recommendations and our rationale for
13 them.

14 Going to a specific discussion of
15 reserves which we include within this broader
16 discussion. In the Proponent's final submissions they
17 agreed that the Board has authority to prescribe the
18 size of reserves and to impose terms and conditions in
19 relation to all matters related to size, purpose and
20 means of ensuring their integrity. The Proponent then
21 proceed to argue against a fixed width approach to
22 planning reserves saying that they believed that fixed
23 width approach was not the best planning approach
24 because more site specific analysis might indicate that
25 a different width - and they suggested either smaller

1 or larger - was required.

2 We provided considerable evidence on the
3 need for reserves, the frequency of reserve infractions
4 and the effects of inadequate reserves. Again, a great
5 deal of that evidence was provided specific to the
6 Temagami area as a case study or a case in point.

7 We submit that a regulated minimum
8 reserve for all values and areas of concern must be
9 established with local conditions and needs extending
10 these reserves where necessary. We certainly support
11 the Proponent's interest in extending those reserves
12 but submit that there must be an absolute minimum,
13 there must be a minimum reserve, that it can't be
14 inflexible in that it would allow those reserves to
15 shrink.

16 In the discussion of old growth, the
17 Ministry of Natural Resources in its evidence and final
18 submissions has acknowledged the importance of old
19 growth forest ecosystems and has outlined the
20 Ministry's approach, including the creation of two
21 advisory committees to develop an old growth
22 conservation strategy and I'm fairly familiar with
23 them, sitting on one of them, and to establish
24 protection and management policies for these forest
25 values.

1 Parties to the hearing have brought
2 evidence on the value of old growth forests to the
3 people of Ontario ecologically and socially. We have
4 said that old growth forests in particular are the only
5 living laboratories through which we may be able to
6 learn how to pattern or blueprint sustainable forests
7 in the future. Chris Maser writes that:

8 "To lose the old growth forests is to
9 cast ourselves adrift in a sea of total
10 uncertainty with respect to the
11 sustainability of future forests."

12 We submit that the conditions set out by
13 Forests for Tomorrow with respect to old growth forests
14 differ significantly from those of the Proponent
15 particularly in their specificity and their address of
16 the need for interim measures pending completion of the
17 species specific old growth descriptions and
18 inventories.

19 We support the inclusion of Forests for
20 Tomorrow's condition 56 in the Board's terms and
21 conditions of approval for the undertaking, rather than
22 relying on the conditions set out by the Proponent.

23 MADAM CHAIR: Excuse me, Ms. Lloyd. On
24 that point, do you have anything further to say to the
25 Board about the work of the advisory groups with

1 respect to old growth forests; or that you're satisfied
2 that the Board consider the one term and condition by
3 Forests for Tomorrow?

4 MS. LLOYD: We're satisfied by that. I
5 would be happy to answer any questions that you might
6 have about the progress that the policy advisory
7 committee is making. I'm satisfied with the progress
8 we're making, it's a big task, it's a big job, but the
9 conservation of old growth forests is not solely
10 dependent on the effectiveness or the results of those
11 policy advisory committees or of the other initiatives
12 of the Ministry, and I think that Forests for
13 Tomorrow's conditions provide some greater certainty
14 that the recommendations and the strategies developed
15 by those committees will in fact be implemented within
16 a reasonable amount of time.

17 I accept and respect that it is the
18 Ministry's intent to implement the conservation
19 strategies within a reasonable period of time, but it
20 is Northwatch's submission that the public and
21 Northwatch as a public interest group would like the
22 greater certainty that Forests for Tomorrow's condition
23 provides, particularly with respect to the
24 implementation.

25 If I could go on to the discussion of

1 land uses and allocation of rights. This is specific
2 to aboriginal people and allocation of timber to
3 Anishnabek operators. In Northwatch's evidence as in
4 the evidence of some of the other intervenors, the
5 interests and rights of aboriginal people with respect
6 to land uses and allocation of rights were demonstrated
7 in both general and specific manners.

8 Northwatch's evidence with respect to
9 these rights and how the recognition of the rights
10 should be integrated into the timber management
11 planning relates to all areas of the Board's decision,
12 but we dealt with primarily in our final submissions on
13 public decision-making, which I've already addressed,
14 the land uses and allocation of rights.

15 Evidence brought by Northwatch supported
16 the panel in directing the Proponent to identify
17 medicinal plants as a priority value, to establish
18 protection mechanisms for medicinal plants, to increase
19 allocations of harvesting areas to Anishnabek
20 operators, to implement activities and programs
21 honouring treaty rights, to make OMNR policies
22 sensitive to traditional beliefs of First Nations, to
23 transfer technology research and technical assistance
24 to First Nations, and to hire Anishnabek people as
25 program managers and as cultural experts.

1 We called a number of witnesses in the
2 area of Anishnabek land use who provided evidence with
3 respect to timber allocation practices of the MNR and
4 the deficiencies of those practices and with respect to
5 other forest values and uses such as medicinal plants.

6 We would like to discuss the protection
7 of identified native values as outlined in the
8 Proponent's final submissions and terms and conditions.
9 We support the Proponent's proposal to develop at an
10 early part of developing the timber management plan a
11 report on identified native values, however, we do not
12 support the Proponent's proposal to proceed with the
13 development of such a report only in those instances
14 where native community has opted for a separate timber
15 management native consultation program rather than
16 participating in a consultation program structured for
17 the general public.

18 The MNR made reference to our witness Mr.
19 Ron Wakegijig and his responses under cross-examination
20 in their final submissions with respect to the
21 importance of identifying native values in timber
22 management planning. In his witness statement Mr.
23 Wakegijig discussed some of the values that may be lost
24 in timber operations and their value to him as a
25 traditional healer.

1 We accept that -- by the Proponent making
2 reference to Mr. Wakegijig's evidence and his concerns,
3 we accept that the Proponent, or we expect that the
4 Proponent has recognized the value and the importance
5 of those values, but we don't see that reflected in
6 their final submissions, particularly with respect to
7 the mapping of native values.

8 We submit that native values mapping
9 should be a standard part of the timber management
10 planning process and not one which is contingent on a
11 native community opting for a native consultation
12 program or, indeed, it should not be contingent on
13 formally participating in the consultation program in
14 any manner.

15 While we agree with the Proponent that
16 they could collect a better quality of information with
17 the cooperation and the involvement of the appropriate
18 native communities, the preparation of native value map
19 should not be conditional on any form of participation,
20 it should be a given.

21 MR. MARTEL: Could I ask a question?

22 I understand that that was in fact as a
23 result of an agreement between NAN and the Ministry and
24 the forest industry that that became part of the
25 package that was agreed to.

1 MS. LLOYD: Yes, I understand that and I
2 think that we very much support the native values
3 mapping, but the direction from our coalition is that
4 it is insufficient and it should go one step forward.

5 We're not in any way arguing against
6 native value mapping and I presume - although I haven't
7 reviewed all of the background documentation and
8 specifics to really base that presumption on - I
9 presume, I understood that it was a discussion between
10 Industry, NAN and MNR which resulted in that part of
11 the MNR's proposal or that part of the MNR's terms and
12 conditions.

13 MR. MARTEL: There is opposition - I
14 shouldn't say opposition, I don't want to put it that
15 way - but Grand Council Treaty 3 wants that not to be
16 made, the native consultation at least apply to their
17 people, to their various nations.

18 MS. LLOYD: Want the native consultation
19 program to not apply?

20 MR. MARTEL: That's right.

21 MS. LLOYD: And we're not suggesting that
22 the native consultation program should be mandatory and
23 we're not suggesting that the native consultation
24 program should be the presumed form of participation
25 for native people. In fact, we're suggesting that the

1 public decision-making model as outlined by the
2 Proponent really in entirety.

3 What we're doing when we make these
4 suggestions is we're accepting that they've made a
5 certain proposal and we're going to work with it, but
6 in fact it's our submission that the decision-making
7 process, the timber management planning process as
8 outlined by the Proponent it's fundamentally in error
9 because there should be an initial stage which
10 establishes the Proponent, the MNR, and First Nations
11 as equal decision-makers or as equal parties to the
12 decision-making process throughout from the beginning.

13 So we don't really, in essence, accept
14 that the model is the correct model, but from there we
15 go on and say, okay, this is the model. We provided
16 our comments and submissions on the model and said that
17 we think that we've missed -- you know, the front-end
18 objective has been missed which is to have the broader
19 goals and objectives established by First Nations and
20 the Proponent at the very front end. That's been
21 missed.

22 Then we go on and we do engage in a
23 discussion of the model that they propose and we don't
24 consider, or we don't accept that by doing that that we
25 are negating what we've said, you know about some of

1 the more fundamental deficiencies of the model.

2 And I understand that -- I would expect
3 that there's a broad range of opinion among aboriginal
4 communities in terms of how they want to be involved,
5 how they want to be consulted, how they want to -- you
6 know, what they see their role as being, it's not a
7 homogenous group. I think that that's clear.

8 MADAM CHAIR: Is it the position of
9 Northwatch, Ms. Lloyd, that MNR has a responsibility to
10 collect some description of, as you have described,
11 native values, whether or not the community cooperates
12 in that process?

13 MS. LLOYD: Yes. I think that's -- I
14 mean, recognizing that some of the mapping is of
15 sensitive areas and it's not -- I mean, there's a
16 greater discussion to be had there. Recognizing that
17 there are protocols that need to be established with
18 respect to how the mapping is done, how the information
19 is used and so on, and we would submit that there needs
20 to be a number of protocols developed, you know,
21 attached to each step of the timber management planning
22 process particularly with respect to the relationship
23 between the various governments, the OMNR and First
24 Nations.

25 MR. FREIDIN: Madam Chair and Ms. Lloyd,

1 I don't usually -- and this is the first time I've had
2 to even interject I think in someone's argument - but I
3 have some confusion with the words which have been used
4 here and I just want to make sure that I understand.

5 In your argument you refer to the need
6 for a report on identified native values should be
7 required regardless of whether or not the native
8 communities opt into the native public consultation
9 program, and you go on and you speak about the need for
10 values mapping.

11 Now, our terms and conditions don't have
12 a document called report on identified native values.
13 We have two reports, one is called native background
14 information report, and that one is in our appendix No.
15 6 and it provides for -- and it applies regardless
16 whether you opt in and it refers to, in paragraph (c),
17 a native values map.

18 The document that we have in our appendix
19 10 which is called report on protection of identified
20 native values, which is more similar to the wording you
21 have used, is the one which only kicks in if a
22 community opts in for the native consultation program.

23 So all I'm saying is we have a
24 requirement in our appendix 6 for values mapping which
25 happens all the time in relation to native matters,

1 and I'm just wondering whether your remarks here are
2 saying that you want that to -- it seems that maybe the
3 values mapping already exists and I'm just wondering
4 whether there's a problem with your reference to the
5 name of the report.

6 I hate to interrupt but I think it's
7 important that I understand what your concern is so I
8 know whether I have to respond.

9 MS. LLOYD: I think it was a helpful
10 interruption and I think that you have identified an
11 error on our part in terms of using the proper titles.

12 So when we talk about -- the first we
13 understand applies in all instances, the second we
14 suggest, the background report on protected native
15 values, that's the one that we're suggesting should not
16 be contingent on participation in the native
17 consultation program.

18 I would like to go on and present -- are
19 we fine.

20 MADAM CHAIR: Yes, Ms. Lloyd. Please
21 continue.

22 MS. LLOYD: I'd like to just make some
23 brief comments on the effect of aboriginal and treaty
24 rights on timber management planning.

25 The Proponent contends that aboriginal

1 and treaty rights are to do date, to a large extent,
2 undefined but this statement to us suggests that the
3 Proponent considers that due to their perception of
4 undefined nature of the rights they're relieved of the
5 obligation to act in accordance with those rights
6 despite the evidence brought by their own witnesses
7 which would correct that perception, and we would refer
8 again to the evidence brought by Dr. Balsillie in
9 reply.

10 We'd suggest that the approval of the
11 undertaking must be made after consideration of not
12 just the question of how are aboriginal and treaty
13 rights affected by the undertaking, but also the
14 question of how is the undertaking affected by
15 aboriginal and treaty rights.

16 We don't think that there are the same
17 question and we'd like to encourage the Board to
18 consider from the latter perspective.

19 MADAM CHAIR: Which page are you on, Ms.
20 Lloyd?

21 MS. LLOYD: Sorry, page 23, top of page
22 23.

23 The discussion of the allocation of
24 timber to Anishnabek people, we certainly raised in our
25 evidence and I believe in the evidence of some of the

1 other parties, although I confess to not being familiar
2 with the details of all of the evidence that has been
3 brought before you.

4 The Proponent has submitted to the Board
5 in response to Board issue 3.1 the question: What is
6 the Board's authority to require mNR to allocate timber
7 resources to any particular individual or group and
8 consider in particular aboriginal groups. They
9 submitted that the allocation of natural resources to
10 specific groups or individuals is a government policy
11 decision and these decisions are not made in timber
12 management planning processes and that defining the
13 rights of access to resources, including timber, should
14 be addressed by the government as a whole.

15 In your ruling of January 17th you held
16 that to the extent that licensing is part of the timber
17 management planning process, it is both relevant and
18 within the Board's jurisdiction to consider.

19 We would further submit that it's within
20 your authority to direct the Proponent in terms of how
21 government policy which is already established applies
22 to the undertaking and we would further submit that
23 government policy has already been established as
24 evidenced by the statement of political relationship
25 and the Proponent's own witnesses' articulation of that

1 policy, and we refer again to Dr. Balsillie's
2 statements.

3 We further submit that the undertaking
4 must also be approved in a context which is cognizant
5 of existing law and that the Proponent's evidence
6 supports this consideration of socio-economic effects
7 in the assessment of the undertaking, and that the
8 Environmental Assessment Act requires consideration of
9 the social and economic environment and the positive
10 and negative effects of the undertaking on those
11 environments, and that applies to Anishnabek people as
12 to others.

13 In support of their submission that the
14 approval of the undertaking should not include
15 direction with respect to the allocation of timber
16 resources to native people, the Proponent has made a
17 number of statements. They've said that the EA Act is
18 not intended towards enhancement of the economic
19 situation of any particular individual or group and
20 that the EA Act does not require the Proponent of an
21 undertaking to create additional effects; i.e., by
22 enhancing or optimizing existing elements of the
23 environment which may be affected by the undertaking.

24 But in their evidence the Proponent also
25 provides evidence that would suggest otherwise and

1 suggests in fact that at least one of the purposes of
2 the undertaking is to enhance the socio-economic
3 environment.

4 And in their statement of evidence Panel
5 10, Volume II, they provided us with an example of that
6 where they said that:

7 "The purpose of this document is to
8 identify the potential environmental
9 effects of the various systems and
10 methods of harvest on the socio-economic
11 environment and the actions that can be
12 taken to enhance the positive effects."

13 So it is our submission that given that
14 they can provide -- that they've brought evidence
15 before you about timber management planning and timber
16 activities and their ability to enhance the positive
17 effects, that enhancing the socio-economic situation of
18 Anishnabek people is an appropriate consideration.

19 The Proponent further describes the
20 purpose of the undertaking as being to enhance
21 socio-economic environment of various groups and
22 people. And they say that various groups of people
23 within society and the economy who have an interest or
24 stake in decisions concerning the use of resources at
25 the timber management unit level, for the purpose of

1 this document the socio-economic environment can be
2 described in terms of the value and concerns held by
3 various stakeholder groups.

4 We would not really agree that aboriginal
5 people, Anishbek people are equitable to any other
6 stakeholder group but the Proponent has argued that it
7 can be -- that concerns held by various groups are a
8 consideration, are an influence on the decisions.

9 They also go on to say that the potential
10 effects of timber harvest operations, although
11 generally similar, have some aspects that are site
12 specific and that decisions can be based on
13 pre-existing obligations.

14 We would suggest that a pre-existing
15 obligation of relevance here is the statement of
16 political relationship and the obligations which flow
17 from that. It is one that recognizes aboriginal and
18 treaty rights and, in so doing, directs the Proponent
19 to allocate timber resources to aboriginal people as
20 part of their planning process.

21 Within their evidence the Proponent has
22 at various times identified various groups and
23 acknowledged their various responsibilities to these
24 groups.

25 For example, in Panel 10 in their

1 table-form discussion of measures to enhance, prevent,
2 minimize, mitigate or correct effects of harvest,
3 stakeholders are variously identified as mining
4 industry, tourist operators, trappers, wild rice
5 harvesters and so on and they include native people,
6 but in their final submission they in fact -- so in
7 their final submission they, in effect, support
8 Northwatch's submission that direction should be given
9 to increase allocation of timber to Anishnabek people
10 as an identifiable group but with established rights
11 and a special relationship with the province. They do
12 this by demonstrating a particular regard for
13 allocation and employment for native people as part of
14 their practices to date.

15 Where on page 456 of their final
16 submissions they describe how in the context of timber
17 management operations in the vicinity of native
18 communities they've provided potential job
19 opportunities and so on and they continue to list a
20 number of licences and employment opportunities that
21 have been provided as part of presumably the timber
22 management activities for which they're responsible.

23 In conclusion we submit that the
24 undertaking should be approved with conditions attached
25 that direct the Proponent to establish quotas and

1 practices for the allocation of timber resources to
2 Anishnabek people as a particular group with particular
3 rights and that the MNR examine its allocation systems
4 to remove barriers to First Nations operators.

5 In summary we'd just like to restate that
6 our submissions have been focussed in the four areas of
7 evidence called by Northwatch in our appearance before
8 you earlier this year. We would like to say that the
9 limitation has been a practical one rather than a
10 preferred one and we'd ask that it not be considered a
11 limit to those matters which Northwatch holds to be of
12 great concern and to be relative to the Board's
13 considerations.

14 Northwatch is relying on the evidence and
15 final submissions of other parties to a large degree
16 and rely on other native intervenors in some instances
17 in silviculture, and on Forests for Tomorrow in
18 particular in their discussion of silvicultural
19 standards and the deleterious effects of timber
20 management activities on the forest estate.

21 We support the position being taken by
22 the Coalition of Forests for Tomorrow that integrated
23 forest management planning is an environmentally
24 superior method of planning access, harvest, renewal
25 and maintenance and that it can meet three essential

1 tests: The test of satisfying the purpose of the
2 undertaking which is to provide a continuous and
3 predictable supply of wood to Ontario's forest products
4 industry, which it meets as adequately as does the
5 Proponent's own proposed undertaking; it meets the test
6 of satisfying the public interest purpose of the
7 Environmental Assessment Act in that it provides a
8 superior address of other values in a broader social
9 context than does the Proponent's; and it meets the
10 third test of meeting the Proponent's own clearly
11 stated objective of sustainability.

12 Northwatch has reviewed the terms and
13 conditions submitted by Forests for Tomorrow and finds
14 them to be a fair representation of Northwatch's views
15 in all those areas which Northwatch has not provided
16 comment on in its submission.

17 In closing our submissions we'd like to
18 say that we have provided a request for an order which
19 asks that the approval be given to proceed with the
20 undertaking as amended and as subject to the terms and
21 conditions which we've set out in this submission and
22 as contained in recommendations found in the appendices
23 and, as we've said, subject to the terms and conditions
24 provided by Forests for Tomorrow in those areas which
25 we've not addressed.

1 In closing I'd just like to thank you
2 again for providing what we found to be a friendly
3 process. I think that we felt somewhat limited
4 throughout the close to five years of this hearing and
5 we appreciate the atmosphere of respect which you've
6 maintained within the hearing room and we've
7 appreciated the flexibility or leniency which you've
8 afforded to us as a smaller party who was not always
9 able to mee -- was frequently unable to meet the
10 obligations of the larger parties.

11 We have some suggestions that we'd like
12 to ask you to pass on perhaps to the Environmental
13 Assessment Board in general that would assist, I think,
14 smaller parties in participating in these kinds of
15 proceedings. A couple of the barriers that we think
16 could be removed would be easier provision of
17 transcripts, and particularly transcripts on disk
18 would have been of great assistance to us and
19 particularly as we prepared our final argument.

20 We know in other proceedings that is the
21 case, for example, in the Demand/Supply Plan hearing
22 that is the case at least for the larger parties and
23 we've had discussions with the funding panel in this
24 hearing about how we might be able to access
25 transcripts and I understand that the best we were able

1 to arrange was access at the Board's office in Toronto,
2 which is some access but not the handiest access.

3 And we'd also like to suggest that the
4 Environmental Assessment Board consider establishing
5 perhaps an Ombudsman Office or function to provide
6 outreach to the public and to smaller parties and,
7 again, this concern stems not just from our experience
8 in this hearing but with respect to the environmental
9 assessment process at large and indeed the process as
10 it takes place before a hearing in some case.

11 We'd just like to put to you that what
12 seems obvious to the every day parties and what seems
13 obvious to those parties with full-time legal counsel
14 or full-time case managers or whatever, is not always
15 obvious to the smaller parties or to participants.

16 And we think that while certainly your
17 staff has been accessible to us, we think that there
18 could be a more proactive approach taken by
19 establishing that kind of Ombudsman function or person
20 within the Board.

21 But I want to thank you again for the
22 courtesy and respect that you've afforded to us as a
23 party in this proceeding.

24 Thank you.

25 MADAM CHAIR: Thank you very much, Ms.

1 Lloyd, and we thank the Northwatch Coalition for taking
2 part in the hearing.

3 We wish you well.

4 MS. LLOYD: Thank you.

5
6 ---Whereupon the hearing was adjourned at 2:35 p.m., to
7 be reconvened on Monday, November 9th, 1992,
8 commencing at 9:00 a.m.

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25 BD/MC [C. copyright 1985].



